

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBERT FIREMAN and ANN RAIDER,

Plaintiffs,

v.

Civil Action No. 05-11740-MLW

NEWS AMERICA MARKETING IN-STORE,
INC.,

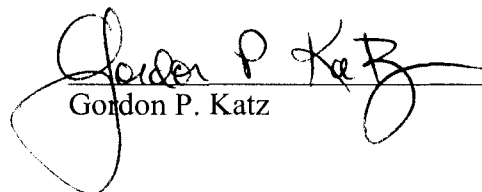
Defendant.

SUPPLEMENTAL AFFIDAVIT OF GORDON P. KATZ

I, Gordon P. Katz, on oath depose and state as follows:

1. I make this Supplemental Affidavit in connection with defendant's reply to plaintiffs' opposition to defendant's motion for summary judgment.
2. Appended hereto as Exhibit A is a true copy of the minuscrit deposition of David F. Devoe, Jr.
3. Appended hereto as Exhibit B is a true copy of the minuscrit deposition of Henri Lellouche.
4. Appended hereto as Exhibit C is a true copy of the minuscrit deposition of Christopher Mixson.
5. Appended hereto as Exhibit D is a true copy of the minuscrit deposition of Marty Garofalo.

Signed under the pains and penalties of perjury this 14th day of December, 2007.


Gordon P. Katz

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on this 14th day of December, 2007.

/s/ Gordon P. Katz
Gordon P. Katz

EXHIBIT A

DeVoe, Jr., David F.

June 13, 2007

New York, NY

Page 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
CIVIL ACTION NO. 05-1740 MLW

- - - - - x
ROBERT FIREMAN and ANN RAIDER, :
Plaintiffs, :
v. : Deposition of:
NEWS AMERICA MARKETING : DAVID F. DeVOE, JR.
IN-STORE, INC., :
Defendant. :
- - - - - x

TRANSCRIPT of testimony as taken by and before
MARGE TEILHABER, Certified Shorthand Reporter
(NJ License No. XI00856; CT license No. 446), NCRA
Registered Diplomate Reporter, and notary public of
the states of New York, New Jersey, and Connecticut,
at the offices of NEWS AMERICA, INC., 1211 Avenue of
the Americas, 3rd Floor, New York, New York, on
Wednesday, June 13, 2007, commencing at 10:10 in the
forenoon.

DeVoe, Jr., David F.

June 13, 2007

New York, NY

Page 2	Page 4
<p>1 APPEARANCES:</p> <p>2</p> <p>3 TODD & WELD LLP</p> <p>4 28 State Street</p> <p>5 Boston, Massachusetts 02109</p> <p>6 BY: DAVID H. RICH, ESQ.</p> <p>7 Attorneys for plaintiffs</p> <p>8 617-720-2626 drich@toddweld.com</p> <p>9</p> <p>10 HOLLAND & KNIGHT</p> <p>11 10 St. James Avenue</p> <p>12 11th Floor</p> <p>13 Boston, Massachusetts 02116</p> <p>14 BY: GORDON P. KATZ, ESQ.</p> <p>15 Attorneys for defendant</p> <p>16 617-523-2700</p> <p>17 617-573-5839 gordon.katz@hkclaw.com</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 INDEX</p> <p>2 WITNESS PAGE</p> <p>3 DAVID F. DeVOE, JR.</p> <p>4 Examination by Mr. Rich 9</p> <p>5 Examination by Mr. Katz 198</p> <p>6 Examination by Mr. Rich 199</p> <p>7</p> <p>8 EXHIBITS</p> <p>9 NUMBER DESCRIPTION IDENT.</p> <p>10 DeVoe-12 2-page document entitled Notice 12</p> <p>11 of Taking Deposition, two copies</p> <p>12 of 2-page Schedule A, and 1-page</p> <p>13 subpoena</p> <p>14 DeVoe-13 1-page memo dated 5-14-99 and 31</p> <p>15 6-page attachment entitled</p> <p>16 Acquisition of Consumer Card</p> <p>17 Marketing, Inc., Bates</p> <p>18 NAM01474-01480</p> <p>19 DeVoe-14 Memo dated 6-17-99, Bates 62</p> <p>20 NAM03611-616</p> <p>21</p> <p>22</p>
Page 3	Page 5
<p>1 APPEARANCES (continued):</p> <p>2</p> <p>3 NEWS AMERICA INCORPORATED</p> <p>4 1211 Avenue of the Americas</p> <p>5 New York, New York 10036</p> <p>6 BY: J. JORDAN LIPPNER, ESQ.</p> <p>7 Vice-President, Associate General Counsel</p> <p>8 News America Publishing and Marketing Group</p> <p>9 212-852-7166 jlippner@newscorp.com</p> <p>10</p> <p>11 ALSO PRESENT:</p> <p>12 Robert Fireman</p> <p>13 Sarah Chopnick</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 EXHIBITS (continued)</p> <p>2 NUMBER DESCRIPTION IDENT.</p> <p>3 DeVoe-15 Printout of PowerPoint 80</p> <p>4 presentation entitled Three</p> <p>5 Essential Elements, Bates</p> <p>6 FR4897-4901</p> <p>7 DeVoe-16 Document entitled SG&A Expenses, 81</p> <p>8 Bates FR3461</p> <p>9 DeVoe-17 Document entitled Revenue 81</p> <p>10 Assumptions, Bates FR4889</p> <p>11 DeVoe-18 1-page fax transmittal sheet 97</p> <p>12 dated 7-7-99, 1-page document</p> <p>13 entitled CCMI Acquisition Open</p> <p>14 Business Issues, and four fax</p> <p>15 log reports</p> <p>16 DeVoe-19 Email dated 6-23-99, Bates 109</p> <p>17 NAM01298</p> <p>18 DeVoe-20 1-page email dated 7-9-99 and 113</p> <p>19 1-page attachment entitled</p> <p>20 CCMI's Baseline Projections,</p> <p>21 Bates NAM01391-1392</p> <p>22</p>

2 (Pages 2 to 5)

Henderson Legal Services
202-220-4158

DeVoe, Jr., David F.

June 13, 2007

New York, NY

Page 6	Page 8
<p>1 EXHIBITS (continued)</p> <p>2 NUMBER DESCRIPTION IDENT.</p> <p>3 DeVoe-21 Stock Purchase Agreement dated 117</p> <p>4 8-13-99, Bates NAM04566-4623,</p> <p>5 and 37-page attachment entitled</p> <p>6 CCMI Disclosure Memorandum to</p> <p>7 Stock Purchase Agreement as of</p> <p>8 August 13, 1999</p> <p>9 DeVoe-22 1-page letter dated 10-22-99, 163</p> <p>10 Bates FR0315</p> <p>11 DeVoe-23 1-page email dated 11-12-99, 168</p> <p>12 Bates FR0413</p> <p>13 DeVoe-24 3-page letter dated 12-7-99, 169</p> <p>14 Bates FR0043-045</p> <p>15 DeVoe-25 1-page email dated 12-7-99, 173</p> <p>16 Bates NAM03590</p> <p>17 DeVoe-26 3-page document entitled Summary 180</p> <p>18 and Next Steps, CCMI Strategy</p> <p>19 Session 11/17/99, Bates NAM03585-3587</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 IT IS HEREBY STIPULATED AND AGREED by</p> <p>2 and between counsel for the respective parties</p> <p>3 hereto that filing, sealing and certification be and</p> <p>4 the same are hereby waived.</p> <p>5</p> <p>6 IT IS FURTHER STIPULATED AND AGREED</p> <p>7 that all objections, except as to the form of the</p> <p>8 question, are reserved to the time of trial.</p> <p>9</p> <p>10 IT IS FURTHER STIPULATED AND AGREED</p> <p>11 that the within deposition may be subscribed and</p> <p>12 sworn to before any notary public with the same</p> <p>13 force and effect as though subscribed and sworn to</p> <p>14 before this Court.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
Page 7	Page 9
<p>1 EXHIBITS (continued)</p> <p>2 NUMBER DESCRIPTION IDENT.</p> <p>3 DeVoe-27 3-page letter dated 9-11-00, 189</p> <p>4 Bates FR0033-35</p> <p>5 DeVoe-28 5-page email dated 11-15-99, 194</p> <p>6 Bates FR0415-0419</p> <p>7 DeVoe-29 1-page email dated 1-13-00, 197</p> <p>8 Bates FR0021</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 DAVID F. DeVoe, JR.,</p> <p>2 conducting business at</p> <p>3 Fox Entertainment Group, Inc.,</p> <p>4 101 West Pico Boulevard,</p> <p>5 Building 100, Room 5120,</p> <p>6 Los Angeles, California 90035-0057,</p> <p>7 residing at 51 Colony Road,</p> <p>8 Westport, Connecticut 06880,</p> <p>9 having been first duly sworn by the notary</p> <p>10 public, was examined and testified as follows:</p> <p>11 EXAMINATION BY MR. RICH:</p> <p>12 Q. Good morning, Mr. DeVoe. Could you</p> <p>13 state and spell your name for the record, please?</p> <p>14 A. It's David DeVoe.</p> <p>15 MR. RICH: Gordon, going forward,</p> <p>16 the same stipulations?</p> <p>17 MR. KATZ: Yes. Why don't we just</p> <p>18 recite them for the record.</p> <p>19 MR. RICH: Sure. For the record the</p> <p>20 parties have agreed that all objections except</p> <p>21 as to form will be reserved until the time of</p> <p>22 trial as will motions to strike.</p>

3 (Pages 6 to 9)

Henderson Legal Services
202-220-4158

DeVoe, Jr., David F.

June 13, 2007

New York, NY

Page 10	Page 12
<p>1 The witness will have the opportunity</p> <p>2 to read and sign the transcript and the</p> <p>3 parties have waived the requirement of a</p> <p>4 notary.</p> <p>5 Q. Mr. DeVoe, have you ever been deposed</p> <p>6 before?</p> <p>7 A. Yes.</p> <p>8 Q. So I take it you're familiar broadly</p> <p>9 with what's going to happen today?</p> <p>10 A. I'm familiar with the deposition</p> <p>11 process.</p> <p>12 Q. Okay.</p> <p>13 Well, just a couple very broad</p> <p>14 general instructions I tend to provide witnesses at</p> <p>15 the outset of a deposition.</p> <p>16 If at any time you need to take a</p> <p>17 break for any reason to use the men's room, to</p> <p>18 stretch your legs, to clear your head, please speak</p> <p>19 up. I'm happy to take as many breaks as you'd like</p> <p>20 to take throughout the day. I don't anticipate this</p> <p>21 will go all day, but nevertheless feel free to speak</p> <p>22 up. We're happy to break at any point in time you'd</p>	<p>1 Westport, Connecticut?</p> <p>2 A. Since 1995.</p> <p>3 MR. KATZ: Off the record for just a</p> <p>4 second.</p> <p>5 (Whereupon, a discussion was held off</p> <p>6 the record.)</p> <p>7 (Exhibit DeVoe-12, 2-page document</p> <p>8 entitled Notice of Taking Deposition, two</p> <p>9 copies of 2-page Schedule A, and 1-page</p> <p>10 subpoena, received and marked for</p> <p>11 identification.)</p> <p>12 Q. Mr. DeVoe, I hand you a document</p> <p>13 which we've marked for the record as</p> <p>14 DeVoe-Exhibit 12 and I can represent to you that</p> <p>15 there is a stapling error but this represents a</p> <p>16 notice of taking your deposition and the subpoena,</p> <p>17 which is the last page.</p> <p>18 Have you seen any of the documents</p> <p>19 which I've marked as Exhibit 12 before today?</p> <p>20 A. Have I seen the document?</p> <p>21 Q. Yes, or any page of the document.</p> <p>22 A. I don't recall seeing it.</p>
Page 11	Page 13
<p>1 like. Okay?</p> <p>2 A. Yes.</p> <p>3 Q. The second instruction I like to give</p> <p>4 to witnesses is obviously the court reporter can</p> <p>5 only take down words and can't take down gestures,</p> <p>6 visual cues. So I will try to use words. I'm sure</p> <p>7 it will be helpful to her to use words and we'll try</p> <p>8 not to speak over each other. I'm sure it will make</p> <p>9 her happy or happier. Okay?</p> <p>10 A. I understand.</p> <p>11 Q. And lastly, to the extent I ask a</p> <p>12 question that you don't understand, it's inartful,</p> <p>13 please speak up. I'm happy to try and rephrase it</p> <p>14 in a way that conforms to the English language.</p> <p>15 Okay?</p> <p>16 A. Okay.</p> <p>17 Q. Now, Mr. DeVoe, where do you</p> <p>18 currently reside?</p> <p>19 A. I live in Westport, Connecticut.</p> <p>20 Q. What address?</p> <p>21 A. 51 Colony Road.</p> <p>22 Q. And for how long have you resided in</p>	<p>1 Q. Okay.</p> <p>2 How about the last physical page that</p> <p>3 reads subpoena in a civil case? Have you seen that?</p> <p>4 A. I don't recall seeing it.</p> <p>5 Q. Okay.</p> <p>6 The two pages which precede the last</p> <p>7 page is a document entitled Schedule A.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Have you ever seen Schedule A before?</p> <p>11 A. (Examining document.)</p> <p>12 I don't recall seeing this.</p> <p>13 Q. Okay. Have you undertaken any</p> <p>14 independent search for records which may relate to</p> <p>15 this matter?</p> <p>16 A. Yes. I received a notice to check my</p> <p>17 files and I didn't have anything in my files.</p> <p>18 Q. When did you receive that notice?</p> <p>19 A. I don't recall.</p> <p>20 Q. Was it in the last month?</p> <p>21 A. I don't recall when Gordon and I</p> <p>22 talked about it. I imagine it was in the last few</p>

4 (Pages 10 to 13)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 14</p> <p>1 months.</p> <p>2 Q. Okay.</p> <p>3 And what, if anything, did you do to</p> <p>4 look for documents?</p> <p>5 A. I went through, reviewed my files in</p> <p>6 Los Angeles, which had no documents in them related</p> <p>7 to this company, and reviewed the hard drive on my</p> <p>8 computer which had no documents relating to this</p> <p>9 company.</p> <p>10 Q. Anything else?</p> <p>11 A. No.</p> <p>12 Q. Are you currently employed?</p> <p>13 A. Yes.</p> <p>14 Q. And by whom are you currently</p> <p>15 employed?</p> <p>16 A. News America Incorporated.</p> <p>17 Q. And do you hold a position with News</p> <p>18 America Incorporated?</p> <p>19 A. Yes.</p> <p>20 Q. What's your position?</p> <p>21 A. The executive vice-president and</p> <p>22 deputy chief financial officer of Fox Entertainment</p>	<p style="text-align: right;">Page 16</p> <p>1 as NAM or News America Marketing? Is that fair if</p> <p>2 we use those words interchangeably?</p> <p>3 A. Yes. News America Marketing is fine.</p> <p>4 Q. Okay.</p> <p>5 What were your duties and</p> <p>6 responsibilities as executive vice-president and</p> <p>7 chief financial officer of News America Marketing?</p> <p>8 A. The duties and responsibilities</p> <p>9 included financial planning and analysis and</p> <p>10 strategic planning and financial reporting as well</p> <p>11 as a general involvement in the overall business.</p> <p>12 Q. Did you hold any other positions or</p> <p>13 titles for News America Marketing between 1998 and</p> <p>14 October of 2001?</p> <p>15 A. That was my only title.</p> <p>16 Q. During the time that you were</p> <p>17 executive vice-president and chief financial officer</p> <p>18 of New America Marketing, did New America Marketing</p> <p>19 have a new ventures group?</p> <p>20 A. There's a group we referred to as new</p> <p>21 ventures group. I don't know if it was an actual</p> <p>22 legal entity.</p>
<p style="text-align: right;">Page 15</p> <p>1 Group.</p> <p>2 Q. And for how long have you held the</p> <p>3 position of deputy chief financial officer of Fox</p> <p>4 Entertainment Group?</p> <p>5 A. I was in that position either in</p> <p>6 September or October of 2001.</p> <p>7 Q. And you've held that position</p> <p>8 continuously since then?</p> <p>9 A. Yes.</p> <p>10 Q. Prior to taking that position, what</p> <p>11 did you do?</p> <p>12 A. The title was executive</p> <p>13 vice-president and chief financial officer of</p> <p>14 News America Marketing.</p> <p>15 Q. And for how long did you hold that</p> <p>16 position?</p> <p>17 A. I don't recall exactly when I started</p> <p>18 with -- it was sometime before 1998 and I was in</p> <p>19 that position until I started the job with Fox</p> <p>20 Entertainment Group.</p> <p>21 Q. Would it be fair if I throughout the</p> <p>22 day refer to News America Marketing In-Store, Inc.</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. Okay. What did you understand this</p> <p>2 new ventures group, whether it was a formalized</p> <p>3 entity or not, to be?</p> <p>4 A. New ventures group was an opportunity</p> <p>5 for us to evaluate expanding into new businesses.</p> <p>6 Q. And were there individuals who</p> <p>7 participated in the new ventures group?</p> <p>8 A. Yes.</p> <p>9 Q. And who were those individuals?</p> <p>10 A. The primary individuals working in</p> <p>11 that area were Henry Lellouche, Jon Rubin, and</p> <p>12 Heather Harde.</p> <p>13 Q. How about yourself?</p> <p>14 A. And myself.</p> <p>15 Q. And was this new ventures group more</p> <p>16 of an ad hoc group that discussed various</p> <p>17 opportunities that New America Marketing might wish</p> <p>18 to explore?</p> <p>19 A. I'd say it was similar to a business</p> <p>20 development group looking at new opportunities.</p> <p>21 Q. The individuals who participated in</p> <p>22 the new ventures group, their involvement with the</p>

5 (Pages 14 to 17)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

Page 18	Page 20
<p>1 new ventures group was in addition to their regular 2 duties and responsibilities that they had for New 3 America Marketing. Correct? 4 MR. KATZ: Objection. You can answer 5 if you understand the question. 6 A. Can you rephrase the question? 7 Q. Sure. What was Mr. Lellouche's title 8 in, say, 1998/1999? 9 A. I don't recall. 10 Q. How about Mr. Rubin's? 11 A. I don't recall. 12 Q. How about Ms. Harde's? 13 A. I don't recall the specific titles. 14 Q. What did Mr. Lellouche do for New 15 America Marketing in 1998/1999? 16 A. I don't recall the exact time frame. 17 There was a period in which Henry, Jon, and Heather 18 worked with me looking at new business opportunities, 19 and that was primarily what they did if I recall it 20 correctly. 21 Q. Okay. 22 So to the best of your memory</p>	<p>1 exactly when that was, so there was a period prior 2 to that date where they reported to me where they 3 performed other functions. 4 Q. Okay. 5 A. I just don't recall the exact 6 chronology. 7 Q. And I take it from your last answer 8 that you, for lack of a better word, ran the new 9 ventures group? 10 A. Yes, up until the iGroup. 11 Q. When did it become the iGroup? 12 A. I don't recall. 13 Q. Was it before or after the CCMI 14 acquisition? 15 A. It was subsequent to that. Can I 16 clarify that? 17 Q. Yes, please do. 18 A. We purchased three businesses or 19 invested in three businesses. Those three 20 businesses then became part of an entity we called 21 SmartSource iGroup, I believe. 22 Subsequent to that, I continued to</p>
Page 19	Page 21
<p>1 Mr. Lellouche had no other duties and 2 responsibilities beyond evaluating business 3 opportunities for New America Marketing 4 A. During what time frame? 5 Q. Let's talk about 1998/1999. 6 A. I can't be positive related to the 7 second half of 1999. 8 Q. Okay. 9 You would agree with me that 10 News America Marketing entered into a stock purchase 11 agreement with Consumer Card Marketing, Inc. in 12 August of 1999. Correct? 13 A. Yes. 14 Q. Okay. 15 Prior to August of 1999 was 16 Mr. Lellouche's sole duties and responsibilities for 17 News America Marketing evaluating, analyzing 18 business opportunities for News America Marketing? 19 A. At some point after I joined 20 News America Marketing -- I'm not sure exactly 21 when -- Heather, Jon, and Henry reported to me 22 looking at these new opportunities. I don't know</p>	<p>1 look at new business opportunities, but those 2 specific businesses became part of I believe it was 3 the iGroup. Again, I'm not sure if I have the name 4 correctly. 5 Q. Now, were there particular duties and 6 responsibilities that you had as the leader of the 7 new ventures group? 8 A. None other than what I previously 9 talked about. 10 Q. Did Mr. Lellouche have any particular 11 duties and responsibilities other than broadly 12 bringing potential business opportunities to your 13 and the group's attention? 14 A. For a period of time -- again, up 15 until the acquisitions -- they were looking at 16 specific business opportunities. Once the 17 investments and acquisitions were made, each of 18 those individuals spent some time, more direct time 19 within those different entities that either we 20 invested in or purchased. 21 So again the time frame, I don't 22 recall the time frame between kind of when this</p>

6 (Pages 18 to 21)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

Page 22	Page 24
<p>1 business development group, when we kind of coined 2 it new ventures group and when it became something 3 else. I just don't recall the time frame. 4 Q. Now, we're going to be talking a lot 5 obviously about an entity called Consumer Card 6 Marketing, Inc. Is it okay if we use the term CCMI 7 to refer to that group going forward? 8 A. Yes. 9 Q. It'll save some pages of transcript. 10 Okay? 11 A. Yes. 12 Q. Now, you're familiar with a company 13 called CCMI. Correct? 14 A. Yes. 15 Q. When did you first become aware of 16 CCMI's existence? 17 A. I'm not sure exactly when I became 18 aware. 19 Q. Are you able to identify a year? 20 A. The time when I became most familiar 21 was 1999. 22 Q. And how is it that you became aware</p>	<p>1 A. Yes. 2 Q. And I take it something happened 3 after that discussion with Mr. Rubin which led to 4 ultimately the acquisition. Correct? 5 A. Yes. 6 Q. In fact a whole series of things 7 happened. Correct? 8 A. Yes. 9 Q. And my question to you is after 10 Mr. Rubin brought this potential opportunity to your 11 attention, what did you do with that information, if 12 anything? 13 A. I don't recall exactly what we did. 14 Q. Okay. 15 Did you undertake a study of CCMI? 16 A. We did visit CCMI. 17 Q. Okay. 18 A. I don't recall exactly what happened 19 between the time Jon spoke to me and -- 20 Q. What did you understand the business 21 of CCMI to be? 22 A. I understood the business of CCMI to</p>
Page 23	Page 25
<p>1 of CCMI initially? 2 A. Initially it was a company that Jon 3 Rubin mentioned. 4 Q. So Jon Rubin brought this potential 5 opportunity to your attention? 6 A. Yes. 7 Q. What do you remember him telling you 8 initially about CCMI? 9 A. I don't recall. 10 Q. Do you recall whether Mr. Rubin had 11 prepared any documentation to present to you 12 concerning CCMI? 13 A. I don't remember. 14 Q. After Mr. Rubin brought CCMI's 15 existence to your attention, what did you do next 16 relative to CCMI? 17 A. Can you rephrase that? 18 Q. Sure. 19 Mr. Rubin brings an entity, CCMI, to 20 your attention and you don't remember specifically 21 what he said to you or what you said to him. 22 Correct?</p>	<p>1 be a company that supplied frequent shopper cards to 2 retailers, a company that did some retailer data 3 management, not a lot of it but had some data 4 management capabilities, and it was a company that 5 also performed direct marketing functions. 6 Q. In this early time frame did you do 7 anything to study the market for any of these 8 functions that CCMI was undertaking? 9 A. It's reasonable we did that. 10 Q. But you have no memory of what was 11 done? 12 A. It's been a long time. I'm sorry. 13 Q. Was the business of CCMI something 14 that was of interest to you? 15 A. Yes. 16 Q. Why? 17 A. We were interested in evaluating 18 opportunities to expand into targeted marketing 19 services. 20 Q. As a definitional term, what do you 21 understand targeted marketing to be? 22 A. We were hoping to provide product</p>

7 (Pages 22 to 25)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

Page 26	Page 28
<p>1 where we would be able to send specific mailings or</p> <p>2 reach out to specific customers with offers.</p> <p>3 Q. Was that something that News America</p> <p>4 Marketing was doing at the time, in this 1999 time</p> <p>5 period?</p> <p>6 A. No.</p> <p>7 Q. So you were looking to expand the</p> <p>8 business base of News America Marketing?</p> <p>9 A. Yes.</p> <p>10 MR. KATZ: Objection.</p> <p>11 Q. Did you do anything to -- and by you,</p> <p>12 I mean your group -- do anything in this early time</p> <p>13 period to obtain an understanding of CCMI's stature</p> <p>14 in the target marketing industry?</p> <p>15 A. What time frame?</p> <p>16 Q. I want to focus you on the early time</p> <p>17 period when Mr. Rubin first brought this potential</p> <p>18 opportunity to your attention.</p> <p>19 A. I don't recall.</p> <p>20 Q. Did you at some point, at any point</p> <p>21 in time obtain or seek to obtain an understanding as</p> <p>22 to what CCMI's stature was in the targeted marketing</p>	<p>1 company.</p> <p>2 Q. Did you see it as a burgeoning field</p> <p>3 in the marketing industry?</p> <p>4 MR. KATZ: Objection.</p> <p>5 A. What do you mean by burgeoning?</p> <p>6 Q. Well, did you see that there was an</p> <p>7 opportunity for growth in the loyalty card business?</p> <p>8 MR. KATZ: Objection.</p> <p>9 A. What part of the loyalty card</p> <p>10 business?</p> <p>11 Q. Any part of the loyalty card</p> <p>12 business.</p> <p>13 A. I don't understand exactly what</p> <p>14 market you're identifying.</p> <p>15 Q. Okay.</p> <p>16 Well, I think you referenced the fact</p> <p>17 that CCMI was a company that supplied frequent</p> <p>18 shopping cards. Correct?</p> <p>19 A. Yes.</p> <p>20 Q. And do you understand that those are</p> <p>21 sometimes referred to as loyalty cards?</p> <p>22 A. Yes.</p>
Page 27	Page 29
<p>1 industry?</p> <p>2 A. What do you mean by stature?</p> <p>3 Q. What their reputation was.</p> <p>4 A. Yes.</p> <p>5 Q. And how did you go about doing that?</p> <p>6 A. I don't recall.</p> <p>7 Q. What did you learn of CCMI's</p> <p>8 reputation in the targeted marketing industry?</p> <p>9 A. As I recollect, we didn't find</p> <p>10 anything regarding their reputation that was</p> <p>11 extremely positive or extremely negative.</p> <p>12 Q. And sitting here today, you don't</p> <p>13 know what it was you did to acquire that</p> <p>14 information?</p> <p>15 A. I don't.</p> <p>16 Q. Was part of your interest in CCMI</p> <p>17 based on an understanding by you or your group that</p> <p>18 supermarkets and drug stores and other retail chains</p> <p>19 were getting ready to initiate or expand loyalty</p> <p>20 cards and similar type programs?</p> <p>21 A. I believe the loyalty card programs</p> <p>22 were fairly prevalent at the time we evaluated the</p>	<p>1 Q. I think you testified that your</p> <p>2 understanding of the 1999 time frame is that these</p> <p>3 loyalty cards were fairly prevalent. Is that your</p> <p>4 recollection of the industry at the time?</p> <p>5 A. To the best of my knowledge, yes.</p> <p>6 Q. And at that time did you or your</p> <p>7 group see an opportunity for that market to expand?</p> <p>8 MR. KATZ: Objection. You can answer</p> <p>9 the question if you understand it.</p> <p>10 A. As I recollect, we did not see a</p> <p>11 large opportunity in regards to the issuance of</p> <p>12 frequent shopper cards.</p> <p>13 Q. Were any studies in that regard done</p> <p>14 for News America Marketing?</p> <p>15 A. Studies in regard to the issuance of</p> <p>16 frequent shopper cards?</p> <p>17 Q. Yes.</p> <p>18 A. I don't recall.</p> <p>19 Q. Okay.</p> <p>20 How about studies concerning retailer</p> <p>21 data management?</p> <p>22 A. I don't recall.</p>

8 (Pages 26 to 29)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 30</p> <p>1 Q. How about studies done concerning a 2 direct marketing function which was the other item 3 that you said CCMI was doing at the time? 4 A. I don't recall. 5 Q. Do you remember any studies done on 6 any of these issues at any time prior to August 7 of 1999? 8 A. I don't recall any studies. It's 9 reasonable to assume some evaluation was made. I 10 just don't recall. 11 Q. But you have no memory of seeing any 12 such studies sitting here today? 13 A. No. 14 Q. So it's reasonable to assume that 15 someone did an analysis of the market and the 16 industry generally? 17 A. Yes. 18 Q. Because New America Marketing 19 wouldn't in your experience have made an investment 20 had a determination been made that this was a good 21 business or a business with potential? 22 A. At the time of the investment if we</p>	<p style="text-align: right;">Page 32</p> <p>1 Exhibit 13, which has been Bates stamped -- and you 2 can see it in the lower right-hand corner -- as NAM 3 01474 to 01480. 4 Do you see that? Do you see this 5 document? 6 A. Yes. 7 Q. This is a memo that you prepared in 8 May of 1999? 9 A. Yes. 10 Q. Who is John Nallen? 11 A. He's the deputy chief financial 12 officer of News Corporation. 13 Q. And Lon Jacobs? 14 A. At the time Lon was the -- I don't 15 recall Lon's exact title. It may have been deputy 16 general counsel of News Corporation. 17 Q. And Paul Carlucci? 18 A. Paul was the CEO of News America 19 Marketing. 20 Q. What was the purpose in preparing 21 DeVoe Exhibit 13? 22 A. It was to alert them to an</p>
<p style="text-align: right;">Page 31</p> <p>1 made a -- we had a viewpoint as it related to the 2 company we purchased. 3 Q. And what was the viewpoint? 4 A. The viewpoint was it was a company 5 that was making little to no money and we thought 6 the business had strong software that would enable 7 it to interact with retailer data, and we thought 8 there was the potential to grow the business. 9 Q. We'll come back to that. 10 Now, you would agree with me that 11 according to your analysis, CCMI had a value of 40.7 12 to 58.4 million dollars. 13 A. No, I would not agree with that. 14 MR. RICH: Mark this, please, as 15 the next exhibit. 16 (Exhibit DeVoe-13, 1-page memo dated 17 5-14-99 and 6-page attachment entitled 18 Acquisition of Consumer Card Marketing, Inc., 19 Bates NAM01474-01480, received and marked for 20 identification.) 21 Q. Mr. DeVoe, I'm showing you a document 22 which we have marked for the record as DeVoe</p>	<p style="text-align: right;">Page 33</p> <p>1 opportunity for us to acquire CCMI. 2 Q. Now, by the time the memo was 3 prepared a verbal offer had been extended to CCMI. 4 Correct? 5 A. It mentions that in the document. 6 Q. Is that consistent with your memory? 7 A. Yes. If I wrote it down, I assume 8 it's correct. 9 Q. And in fact CCMI had accepted the 10 verbal offer by the time this memo was prepared. 11 Correct? 12 A. In general terms, yes. 13 Q. If you could flip to the third 14 physical page, the bottom of the page, paragraph 4, 15 which is titled Timing and Next Steps, you 16 write, "New America Marketing made a verbal offer to 17 CCMI on May 7th, 1999, which was verbally agreed to 18 by the company on 5/10/99." 19 Correct? 20 A. Yes. 21 Q. Now, on the third physical page where 22 you have model assumptions, the fourth bullet point</p>

9 (Pages 30 to 33)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 34</p> <p>1 from the bottom, "News America's model assumes a 2 valuation range of \$40.7 million to "58.4 million." 3 Do you see that? 4 A. That's not the value of the business 5 at the time we bought it. 6 Q. Okay. 7 What do those numbers correspond to? 8 A. That corresponds to if for some 9 reason we were fortunate enough to hit the 10 projections noted above roughly what we think the 11 business, the potential for the business could be 12 worth. 13 Q. Okay. Who prepared the projections? 14 A. I don't recall. 15 Q. Was it someone from News America 16 Marketing? 17 A. May I look at the appendix? 18 Q. Sure. Take all the time you need. 19 A. (Examining document.) 20 Yes. Those would have been 21 projections made from someone at News America 22 Marketing.</p>	<p style="text-align: right;">Page 36</p> <p>1 A. Exhibit 13 as it relates to the 2 financial results and the projections were the best 3 estimate at the time looking at where the business 4 maybe could lead to, where it could potentially go. 5 But as far as looking at specific -- 6 I guess at the time the degree of confidence in 7 hitting these projections was not high. 8 Q. Okay. 9 And is that mentioned anywhere in the 10 memo? 11 A. Well, I would refer you to the second 12 paragraph in the memo where it states that "most of 13 the asset value is inherent in software development 14 utilized to interface with retailer point of sale 15 systems to segment consumer purchase histories 16 enabling targeted marketing programs." 17 So at that time essentially after 18 looking at that, the understanding is what 19 essentially you're acquiring is primarily that 20 asset. As it relates to the future projections of 21 the business, I think there's an understanding that 22 that may or may not happen.</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. What, if anything, did you do prior 2 to sending this memo to confirm that the numbers set 3 forth in the projections were realistic? 4 MR. KATZ: Objection. 5 A. What do you mean by realistic? 6 Q. Well, I take it that this memo you 7 prepared on May 14th, 1999 was intended to provide 8 information to Mr. Nallen and Mr. Jacobs and 9 Mr. Carlucci. Correct? 10 A. Yes. 11 Q. And I take it it's your practice to 12 provide to anybody but particularly these 13 individuals information which is accurate and 14 well-founded. Correct? 15 A. Yes. 16 Q. And your memo contains a series of 17 projections. 18 Is that correct? 19 A. The memo contains a series of 20 assumptions and a best guess what the business may 21 or may not become. 22 Q. So Exhibit 13 was a guess?</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. Okay. 2 But if you keep reading, the next 3 paragraph says, "Attached is an overview of the 4 company along with estimated financial projections 5 of the business over the next five years." 6 Is that correct? 7 A. These were estimates. 8 Q. Correct. But nowhere in here did you 9 say -- strike that. 10 Were these estimates prepared by 11 financial individuals at News America Marketing? 12 MR. KATZ: Objection. 13 A. I don't recall. 14 Q. I take it you reviewed the financial 15 projections before signing your name to this memo. 16 Correct? 17 A. Yes. 18 Q. And you have a financial background? 19 A. That's true. 20 Q. What is your background in finance 21 and accounting? 22 A. I'm a CPA.</p>

10 (Pages 34 to 37)

Henderson Legal Services
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DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 38</p> <p>1 Q. When did you become a CPA?</p> <p>2 A. I don't recall the exact date. It</p> <p>3 was either 1989 or 1990.</p> <p>4 Q. Working as a CPA you worked for a</p> <p>5 large accounting firm?</p> <p>6 A. That's correct.</p> <p>7 Q. Ernst & Young I believe?</p> <p>8 A. Yes.</p> <p>9 Q. What did you do for Ernst & Young?</p> <p>10 A. I was on the audit staff.</p> <p>11 Q. As part of your duties and</p> <p>12 responsibilities on the audit staff you would</p> <p>13 analyze financial information?</p> <p>14 A. Yes.</p> <p>15 Q. And did you use your background and</p> <p>16 experience as a CPA to review and consider the</p> <p>17 information that you were providing to Mr. Nallen</p> <p>18 and Mr. Jacobs and Mr. Carlucci?</p> <p>19 A. Yes.</p> <p>20 Q. And you felt comfortable doing so?</p> <p>21 A. Yes.</p> <p>22 Q. Now, on the first page of Exhibit 13,</p>	<p style="text-align: right;">Page 40</p> <p>1 in we kind of saw as opportunities in the targeted</p> <p>2 marketing area as well.</p> <p>3 Q. And that would be SoftCard and</p> <p>4 PlanetU?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And we'll talk about those in</p> <p>7 a moment.</p> <p>8 Are there other entities, companies,</p> <p>9 or opportunities that News America Marketing</p> <p>10 investigated in the 1999 time period?</p> <p>11 A. I don't recall.</p> <p>12 Q. What about Catalina Marketing?</p> <p>13 A. Catalina Marketing we reviewed I</p> <p>14 believe it was 1998 perhaps. I don't recall the</p> <p>15 exact date.</p> <p>16 Q. Did News America Marketing engage in</p> <p>17 substantive negotiations with Catalina Marketing?</p> <p>18 A. No.</p> <p>19 Q. Any reason why?</p> <p>20 A. We did an internal proposal looking</p> <p>21 at the business and at that time we weren't able to</p> <p>22 proceed.</p>
<p style="text-align: right;">Page 39</p> <p>1 the second sentence, you write, "The acquisition is</p> <p>2 strategic in nature."</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. What did you mean by the acquisition</p> <p>6 being strategic in nature?</p> <p>7 A. It was an opportunity to get into a</p> <p>8 new business.</p> <p>9 Q. And it was a strategy of News America</p> <p>10 Marketing to get into a new business such as the</p> <p>11 business of CCMI?</p> <p>12 A. It's our strategy to evaluate many</p> <p>13 opportunities, and during that time frame we were</p> <p>14 evaluating opportunities in the targeted marketing</p> <p>15 areas.</p> <p>16 Q. Were there other targeted marketing</p> <p>17 companies that you considered in this 1999 time</p> <p>18 period?</p> <p>19 A. Yes.</p> <p>20 Q. Are you able to identify any of them</p> <p>21 by name?</p> <p>22 A. The other two companies we invested</p>	<p style="text-align: right;">Page 41</p> <p>1 Q. Is there any reason why you weren't</p> <p>2 able to proceed?</p> <p>3 A. Yes. News Corporation didn't agree</p> <p>4 with the direction at the time.</p> <p>5 Q. So I take it a memo similar to</p> <p>6 Exhibit 13 was prepared concerning a potential</p> <p>7 interest in Catalina Marketing?</p> <p>8 A. I don't recall the documents that</p> <p>9 were prepared.</p> <p>10 Q. But nevertheless in 1998 it's your</p> <p>11 memory that a decision was made by News Corp. that</p> <p>12 Catalina wasn't for whatever the reason a good fit?</p> <p>13 MR. KATZ: Objection.</p> <p>14 A. It was determined that the -- it was</p> <p>15 determined not to proceed with negotiations with</p> <p>16 them.</p> <p>17 Q. Now, a decision was made to proceed</p> <p>18 with CCMI. Correct?</p> <p>19 A. Yes.</p> <p>20 Q. And are you able to identify the</p> <p>21 reason why discussions proceeded with CCMI but</p> <p>22 didn't proceed with Catalina Marketing?</p>

11 (Pages 38 to 41)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 42</p> <p>1 A. They're two very different 2 opportunities. 3 Q. Any other reason? 4 A. As I said before, at the time the 5 Catalina Marketing acquisition would have been a 6 more substantial investment for the company and the 7 company chose not to proceed. 8 Q. Okay. 9 Now, were there any other entities or 10 opportunities that News America Marketing was 11 looking into relative to the business of CCMI in 12 this 1999 time period other than those that you 13 mentioned previously? 14 A. News America Marketing evaluates 15 many, many different businesses. I don't recall a 16 specific opportunity. We may have looked at other 17 companies. It's likely we did look at other 18 companies, but I don't recall a specific 19 opportunity. 20 Q. Okay. 21 Now, your memo actually mentions 22 Catalina Marketing and its acquisition of two</p>	<p style="text-align: right;">Page 44</p> <p>1 full-service retail loyalty marketing company. 2 Is that how you characterized them? 3 A. It's how it's characterized in this 4 memo. 5 Q. Okay. Beyond this memo, is that how 6 your group characterized it? 7 A. I don't recall. 8 Q. Now, the last sentence of the first 9 paragraph says, "The acquisition is also a strategic 10 fit with two other investments that are in 11 negotiation, SoftCard and PlanetU." 12 Do you see that? 13 A. Yes. 14 Q. Why was the CCMI acquisition a 15 strategic fit with these two other companies? 16 A. The initial premise was we were 17 trying to expand the business into the targeted 18 marketing area. 19 PlanetU at the time was hoping to 20 enable targeted marketing programs via the Internet. 21 SoftCard Systems was looking at doing some type of 22 targeted marketing in store.</p>
<p style="text-align: right;">Page 43</p> <p>1 companies in the prior nine months, Market Logic and 2 DCI Card Marketing. 3 Do you see that? 4 A. Yes. 5 Q. Do you remember News America 6 Marketing being involved in any way in potentially 7 acquiring Market Logic or DCI Card Marketing? 8 A. I do not. 9 Q. Your memo -- and I apologize because 10 I'm bouncing back up to the sentence before -- notes 11 that "CCMI is the only full service retail loyalty 12 marketing company that has not been acquired over 13 the past year." 14 Do you see that? 15 A. Yes. 16 Q. Where did that information come from? 17 A. That most likely was an opinion, an 18 evaluation. It was probably information, again, 19 from my group that this was probably at the time the 20 only company in that area that hadn't been acquired 21 over the past year. 22 Q. And your group defined CCMI as a</p>	<p style="text-align: right;">Page 45</p> <p>1 Both of those companies' programs 2 were focused around providing these opportunities 3 and interacting with the frequent shopper card. 4 MR. KATZ: Dave, whenever you come 5 to a free moment, if we could take a break 6 for a few minutes. 7 MR. RICH: Let's take a break right 8 now. 9 (Break taken from 10:55 a.m. to 10 11:01 a.m.) 11 Q. When we broke, we were talking about 12 the acquisition of SoftCard and PlanetU and the 13 strategic fit as referenced in Exhibit 13. 14 Did you in analyzing the strategic 15 fit see an opportunity for CCMI's database 16 management to be helpful in assisting and supporting 17 PlanetU and SmartSource? 18 A. No. Each had their own -- at the 19 time of the investments we were prepared to go 20 forward with each one of these investments based on 21 their own merits. If one didn't go through, we were 22 prepared to do the other.</p>

12 (Pages 42 to 45)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 46</p> <p>1 Both of those companies if I recall 2 at the time were trying to build out some data 3 management system, PlanetU I believe in particular 4 more than SoftCard. 5 Q. So you don't recall that CCMI's data 6 management unit could conceivably have been of any 7 assistance to these two entities? 8 MR. KATZ: Objection. 9 A. Prior to the acquisition, that wasn't 10 a consideration of either of the investments. 11 Subsequent to the acquisition I believe we tried to, 12 I believe there was an attempt to get the different 13 principals from those entities to talk to each other 14 and discuss to see if there were different 15 opportunities to work together. And I don't recall 16 what happened after that. 17 Q. What was the business of PlanetU? 18 A. PlanetU was interested in 19 distributing offers over the Internet to consumers. 20 It was essentially couponing offers. 21 Q. How did that strategically fit with 22 the business of CCMI?</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. Well, I'm talking about the idea or 2 the concept of having an iGroup. Was that part and 3 parcel of your thinking prior to the acquisition? 4 A. I don't recall. 5 Q. The second paragraph of page 1 of 6 Exhibit 13 says, "The economics of the business are 7 forecasted to improve as a result of new electronic 8 distribution channels that were not available on a 9 wide scale three years ago." 10 Do you see that? 11 A. Yes. 12 Q. What new electronic distribution 13 channels were you referring to in this memo? 14 A. I don't remember what it was 15 specifically referring to. I don't want to 16 speculate. 17 Q. Would the Internet be part of that? 18 A. The Internet may be part of it. 19 Q. Anything else? 20 A. I'm not sure. It may have included 21 the concept of doing couponing via television or 22 something like that, but it never really took off.</p>
<p style="text-align: right;">Page 47</p> <p>1 MR. KATZ: Objection. You can 2 answer. 3 A. The strategic fit as you reference 4 it -- again I'm referring to strategic fit -- I'm 5 looking at businesses that are all working with 6 loyalty cards in some respect have some targeted 7 aspect to the program. That's the strategic fit. 8 They were all in that respect. 9 Q. What was the business of SoftCard 10 Systems? 11 A. SoftCard had patents that enabled it 12 to distribute coupons via SmartCards. 13 Q. And I take it that you at least saw 14 the potential for SoftCard's business to complement 15 CCMI's business? 16 MR. KATZ: Objection. 17 A. No. Again, each one of those 18 investments we would have done without the other. 19 Q. Did you have the idea of the iGroup 20 prior to acquiring CCMI? 21 A. I don't recall. I believe the iGroup 22 was formed subsequent to the investment.</p>	<p style="text-align: right;">Page 49</p> <p>1 Q. Okay. Anything else? 2 A. Nothing I can recall. 3 Q. If we can get back into Exhibit 13, 4 between the time Mr. Rubin came to you and May 14th, 5 1999, are you able to estimate in any manner the 6 length of time that window was? 7 A. I can't. 8 Q. Was it a year? 9 A. You'd have to check when Jon first 10 started working for me. I don't know when he first 11 started working with me. 12 Q. Was CCMI one of the first 13 opportunities that he brought to your attention? 14 A. No. 15 Q. Okay. 16 Now, for whatever period of time that 17 occurred between Jon Rubin coming to you and 18 May 14th, 1999, did you have any interaction 19 directly with Ann Raider or Bob Fireman? 20 A. The first interaction I had that I 21 recall was when Jon and I went up to Braintree and 22 met with them. I don't recall the exact date.</p>

13 (Pages 46 to 49)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 50</p> <p>1 Q. Are you able to estimate a time 2 period relative to May of 1999? 3 A. No. I don't know when the meeting 4 was. 5 Q. Okay. 6 And who was at this meeting? 7 A. I don't recall who was at the 8 meeting. I know Jon and I were at the meeting. I'm 9 not sure if anyone else attended from News America. 10 Q. Okay. 11 And Ms. Raider and Mr. Fireman were 12 present? 13 A. I believe so. I believe we toured 14 their office and talked to them. 15 Q. Did they make a presentation for you? 16 A. They may have. 17 Q. Do you remember a PowerPoint 18 presentation? 19 A. I don't. 20 Q. Do you remember the specifics about 21 what was discussed? 22 A. I believe at the meeting we discussed</p>	<p style="text-align: right;">Page 52</p> <p>1 them, Ms. Raider and Mr. Fireman, that News America 2 would be interested in purchasing CCMI for? 3 A. I don't remember the exact price. I 4 know the price that I thought was lower than the 5 price that they thought. 6 Q. Okay. 7 Are you able to be any more specific 8 than that? 9 A. I would be guessing at what the 10 initial offer was other than the information that I 11 have in my memo which cites a price and the general 12 assumption that I may have gone in at a lower price 13 than that to start. I don't recall the specific 14 price. 15 Q. Do you remember telling Ms. Raider or 16 Mr. Fireman that you only had \$3 million to spend? 17 A. No. 18 Q. At any time? 19 A. I don't remember that. 20 Q. Do you remember the specifics of any 21 discussion that you had with Ms. Raider and 22 Mr. Fireman during this initial meeting in</p>
<p style="text-align: right;">Page 51</p> <p>1 the price at which we would be interested in 2 purchasing the company for. 3 Q. Prior to this meeting had anybody 4 from News America Marketing done an independent 5 analysis of CCMI's business? 6 A. I don't recall. 7 Q. Okay. 8 Had anybody done an independent 9 analysis of the market or the industry that CCMI was 10 in? 11 A. I don't recall a specific industry 12 study. 13 Q. Were you aware as of this meeting as 14 to who CCMI's competitor were? 15 MR. KATZ: Objection. 16 Q. If any. 17 A. I don't recall. 18 Q. It's possible that such an analysis 19 had been done whether in writing or not but you just 20 don't remember? 21 A. I don't remember. 22 Q. Do you remember what price you told</p>	<p style="text-align: right;">Page 53</p> <p>1 Braintree? 2 A. Yes. We had two different views of 3 the evaluation. We thought the company was worth a 4 certain amount of money. They thought it was worth 5 more money. They had projections I think that they 6 may have done on the business where they thought 7 their business was headed and I think we talked 8 about paying the price for the business, and to the 9 extent the business was able to do better than we 10 expected, we worked out something where they would 11 get a percentage of the gross profit of the 12 business. 13 Q. Do better than who expected? 14 A. We had a value for the business and I 15 guess we agreed that the business was worth 16 \$3 million. That was our view of the valuation of 17 the business. 18 I believe Ann and Bob believed that 19 the business had growth opportunity and up side 20 beyond that, and we weren't going to pay them any 21 more money based on those projections. However, to 22 the extent that those projects materialized, we</p>

14 (Pages 50 to 53)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

Page 54

1 would pay them additional money for the company.

2 Q. Can you take a look back to
3 Exhibit 13?

4 A. Same one?

5 Q. Yes, sorry. On page 3 under model
6 assumptions, the third bullet point from the bottom
7 of that paragraph says, "Based on the deal structure
8 outlined below" -- and by below, I take it you meant
9 the deal structure for subparagraph 3?

10 A. I'm sorry. Where are you?

11 Q. The opening line of the sentence
12 reads, "Based on the deal structure outlined below,"
13 and then there is a deal structure in the paragraph
14 below that.

15 Do you see that?

16 MR. KATZ: I'm searching for your
17 first sentence. Okay.

18 Q. Do you see model assumptions three
19 bullet points from the bottom?

20 A. Yes.

21 Q. It begins by saying, "Based on the
22 deal structure outlined below."

Page 55

1 A. Yes.

2 Q. The deal structure you were referring
3 to is the deal structure listed in the paragraph
4 below?

5 A. Yes.

6 Q. "News America's model assumes a cost
7 to acquire CCMI is 9.8 million in total cash
8 payments."

9 Do you see that?

10 A. Yes, I see that.

11 Q. Okay.

12 So the model that you were preparing
13 and presenting to Mr. Nallen and Mr. Jacobs and
14 Mr. Carlucci assumed a cost to acquire CCMI of
15 9.8 million. Correct?

16 A. (Examining document.)

17 Yes, assuming a significant amount of
18 revenue growth over that time.

19 Q. Well, this was News America's model.
20 Correct?

21 A. Yes. I believe the CCMI model was
22 higher.

Page 56

1 Q. Correct. In fact if you look two
2 bullet points below, you do an analysis of CCMI's
3 model which assumes 70 million in gross margins,
4 which was a greater margin than News America had
5 estimated.

6 A. I guess they had greater confidence
7 in the business.

8 Q. But at least as of May of 1999 you
9 were informing your superiors that the cost to
10 acquire CCMI, according to the models that you were
11 running, was 9.8 million in cash, present value
12 6.6 million?

13 MR. KATZ: Objection.

14 A. No. They understood the cost of the
15 acquisition to be \$3 million and then there may be
16 more money paid out and it all depended how the
17 business performed. It could be 3 million and
18 that's it. It could be a lot more than that.

19 The numbers on the sheet could be
20 higher or lower. It all depended on how the
21 business performed. So they understood it as a
22 \$3 million investment, and based on how the business

Page 57

1 performed, there would be an opportunity for
2 additional money earned.

3 Q. Well, your memo doesn't say
4 News America model assumes the cost to acquire CCMI
5 as \$3 million in cash.

6 Is that correct?

7 A. The deal structure states an upfront
8 payment of 3 million and everything else is
9 projections. The assumption of the company is that
10 these are estimates. The company may do better. It
11 may do worse.

12 So their assumption is it's
13 \$3 million, and depending on how the business
14 performs, it may be more than that.

15 Q. But we can agree that in May of 1999
16 you were informing your superiors that the model
17 prepared by News America assumed a cost to acquire
18 the business of \$9.8 million?

19 MR. KATZ: Objection.

20 A. We can agree that the math resulting
21 from the projections that we did would have ended up
22 in that amount being paid.

15 (Pages 54 to 57)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

Page 58

1 Q. Now, isn't it a case that Julie
2 Openshaw, can we agree that -- strike that.
3 Ms. Openshaw worked for you?
4 A. Yes.
5 Q. And can we agree that she was the one
6 that prepared these models and projections?
7 A. I believe she did most likely
8 working -- she may have received feedback from
9 others.
10 Q. And what is Ms. Openshaw's
11 background?
12 A. I don't recall her specific
13 background. She worked I believe as a financial
14 analyst and did business development for me.
15 Q. Back to the meeting in Braintree, you
16 said there were two views on valuation and you
17 talked about paying a price.
18 Is there anything else you recall
19 about this initial meeting?
20 A. No.
21 Q. Were there discussions about the
22 manner in which CCMI would be integrated into

Page 59

1 News America at this initial meeting?
2 A. I don't recall.
3 Q. Were there discussions about any
4 aspect of Ms. Raider or Mr. Fireman's
5 responsibilities discussed at this initial meeting?
6 A. I don't recall.
7 Q. Is there anything that might help
8 refresh your memory about this initial meeting?
9 A. From the initial meeting I understand
10 the dialogue and value. As it relates to everything
11 else, I guess I would be most helped by looking at
12 the final agreement, where we ended up.
13 Q. Okay.
14 Now, was there a subsequent meeting
15 that you participated in with Ms. Raider or
16 Mr. Fireman prior to May 14th of 1999?
17 A. Prior to May 14th?
18 Q. Yes.
19 A. I don't recall.
20 Q. Okay.
21 When was the next time after this
22 initial meeting that you met with Ms. Raider or

Page 60

1 Mr. Fireman?
2 A. I don't know the specific next time
3 we met.
4 Q. Was there a next time?
5 A. I know we had dialogue on negotiating
6 a deal. I don't know if we met in person. A lot of
7 it was done on the phone. I just can't recall the
8 specific meeting.
9 Q. Okay.
10 Well, after the verbal offer was
11 extended and agreed, as I understand it there was a
12 period of due diligence.
13 Is that correct?
14 A. Yes.
15 Q. Were you involved in the due
16 diligence?
17 A. I believe I had, individuals from our
18 organization were involved in the due diligence.
19 Q. Did you participate in any direct way
20 in the due diligence efforts?
21 A. I would have received updates and
22 reports on the diligence.

Page 61

1 Q. How long did the due diligence go on
2 for?
3 A. I'm not sure. I don't know how far
4 it extended up to the point we closed. I assume up
5 until that process we continued to evaluate and
6 tried to obtain information but I can't be sure.
7 Q. Okay.
8 Does anything stand out in your mind
9 during the due diligence process that is memorable?
10 A. No.
11 Q. During the due diligence period were
12 you communicating with anybody from CCMI?
13 A. I may have been.
14 Q. If you were communicating with
15 anyone, with whom would you have been communicating?
16 A. Only to the extent that if we had
17 outstanding items on the list we were looking at
18 that may have been communicated either with the
19 attorneys that were working on the deal for CCMI.
20 I don't specifically recall an exact
21 communication or phone call or a note regarding due
22 diligence but that would be a way that I may have

16 (Pages 58 to 61)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

Page 62	Page 64
<p>1 been involved.</p> <p>2 Q. Do you know a gentleman by the name</p> <p>3 of Gary Beck?</p> <p>4 A. I don't recall.</p> <p>5 MR. RICH: Mark this, please, as</p> <p>6 the next exhibit.</p> <p>7 (Exhibit DeVoe-14, memo dated</p> <p>8 6-17-99, Bates NAM03611-616, received</p> <p>9 and marked for identification.)</p> <p>10 Q. Mr. DeVoe, I show you what's been</p> <p>11 marked for the record as DeVoe Exhibit 14, which is</p> <p>12 Bates stamped NAM03611 to 03616.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Does looking at Exhibit 14 refresh</p> <p>16 your memory as to who Mr. Beck is?</p> <p>17 A. It doesn't.</p> <p>18 Q. Okay.</p> <p>19 Do you have a memory of receiving</p> <p>20 this memo?</p> <p>21 A. I don't. I see it's addressed to me.</p> <p>22 I assume I did receive it and I looked at it at the</p>	<p>1 seeing it.</p> <p>2 MR. RICH: I'm asking him to look</p> <p>3 at it now.</p> <p>4 MR. KATZ: Okay.</p> <p>5 A. (Examining document.)</p> <p>6 Yes, it appears to be a summary of --</p> <p>7 it looks to be notes and his viewpoints on the</p> <p>8 meeting he had at the company.</p> <p>9 Q. Turning to the second physical page,</p> <p>10 he writes at the top, "The most valuable asset this</p> <p>11 firm brings to the table is potentially their equity</p> <p>12 in the marketplace. Their collective relationships</p> <p>13 could be carefully assessed as part of the due</p> <p>14 diligence process."</p> <p>15 Did you share his opinion?</p> <p>16 A. No.</p> <p>17 Q. Did you ever create a document or a</p> <p>18 memo agreeing with that?</p> <p>19 A. No.</p> <p>20 Q. Are you aware of any such document?</p> <p>21 A. No.</p> <p>22 Q. Why do you disagree that the most</p>
Page 63	Page 65
<p>1 time.</p> <p>2 Q. This document is entitled CCMI</p> <p>3 Credentials Meeting.</p> <p>4 A. I see that.</p> <p>5 Q. Are you familiar with what a</p> <p>6 credentials meeting is?</p> <p>7 A. I don't know why he used that word.</p> <p>8 Q. Okay.</p> <p>9 Generally flipping through this</p> <p>10 document, do you see it as a memo summarizing his</p> <p>11 analysis and discussions with various CCMI people?</p> <p>12 MR. KATZ: Can we have the question</p> <p>13 read back, please?</p> <p>14 MR. RICH: I'll withdraw it and ask a</p> <p>15 new one if you want.</p> <p>16 MR. KATZ: Okay.</p> <p>17 Q. Flipping through DeVoe Exhibit 14, do</p> <p>18 you generally understand it to be a memo provided to</p> <p>19 you concerning Mr. Beck's observations in meetings</p> <p>20 with various folks at CCMI?</p> <p>21 MR. KATZ: Objection. I think he</p> <p>22 testified that he doesn't recall ever</p>	<p>1 valuable asset of CCMI is their equity in the</p> <p>2 marketplace?</p> <p>3 A. What I stated as, to go back to</p> <p>4 Exhibit 13, in my note the most valuable asset at</p> <p>5 least that I viewed at the time was the software</p> <p>6 development. It was essentially a good investment,</p> <p>7 almost like a research and development investment in</p> <p>8 some respects.</p> <p>9 Q. Did you agree, putting aside whether</p> <p>10 it was the most valuable asset, did you agree in</p> <p>11 1999 that a valuable asset of CCMI was their equity</p> <p>12 in the marketplace?</p> <p>13 A. We didn't assign much value to the</p> <p>14 CCMI brand.</p> <p>15 Q. Okay.</p> <p>16 What, if anything, did you do to</p> <p>17 assess CCMI's brand equity?</p> <p>18 A. I don't recall.</p> <p>19 Q. Now, the next paragraph says, looking</p> <p>20 at page 2, "Overall an acquisition of CCMI is</p> <p>21 totally consistent with the e/Direct initiative."</p> <p>22 Are you familiar with an e/Direct</p>

17 (Pages 62 to 65)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 66</p> <p>1 initiative?</p> <p>2 A. I don't recall the e/Direct</p> <p>3 initiative.</p> <p>4 Q. Do you agree that the acquisition of</p> <p>5 CCMI was consistent with --</p> <p>6 A. I don't know because I don't remember</p> <p>7 the e/Direct initiative.</p> <p>8 Q. Okay.</p> <p>9 Do you have any idea how Mr. Beck</p> <p>10 would have been familiar with, using the terminology</p> <p>11 e/Direct initiative?</p> <p>12 MR. KATZ: Objection.</p> <p>13 A. I don't remember Gary Beck.</p> <p>14 Q. Okay.</p> <p>15 Well, do you understand generally</p> <p>16 whether you've heard the term e/Direct, you</p> <p>17 understand that part of -- strike that.</p> <p>18 Direct marketing through electronic</p> <p>19 means, are you familiar with that concept?</p> <p>20 A. Yes.</p> <p>21 Q. And that was what PlanetU was</p> <p>22 proposing to do. Correct?</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. What was Lockland Murdock's position</p> <p>2 at News Corp. in the late 1990s?</p> <p>3 A. I don't know his exact title. I</p> <p>4 believe at the time the acquisition was completed</p> <p>5 that Paul Carlucci reported to Lockland.</p> <p>6 Q. And you have no memory one way or</p> <p>7 another whether Mr. Lockland Murdock was involved in</p> <p>8 discussions relative to the acquisition of CCMI?</p> <p>9 A. I don't remember.</p> <p>10 Q. Were there other individuals from</p> <p>11 News Corp. or News America Marketing who were</p> <p>12 involved in discussions concerning the decision to</p> <p>13 go forward with the acquisition of CCMI?</p> <p>14 A. I don't remember.</p> <p>15 Q. How about discussions with Mr. Nallen</p> <p>16 and Mr. Jacobs? Do you remember discussing your</p> <p>17 memo with them at any point in time?</p> <p>18 A. I don't remember discussing the memo</p> <p>19 or the acquisition with them, but clearly I sent</p> <p>20 them a note on it. I just don't remember.</p> <p>21 Q. But you don't remember receiving any</p> <p>22 feedback either orally or in writing from either of</p>
<p style="text-align: right;">Page 67</p> <p>1 A. Yes.</p> <p>2 Q. Do you agree that CCMI's, the</p> <p>3 acquisition of CCMI was consistent with an attempt</p> <p>4 or an effort to enter into the e-marketing field?</p> <p>5 MR. KATZ: Objection. You can</p> <p>6 answer.</p> <p>7 A. I think, again, the main benefits,</p> <p>8 one of the areas we were evaluating was the</p> <p>9 opportunity to become more involved in targeted</p> <p>10 marketing. Whether that marketing was delivered</p> <p>11 through direct mail as historically was done or</p> <p>12 potentially being able to do that and deliver it</p> <p>13 through some other means, I think in that respect if</p> <p>14 it was able to be delivered through some other means</p> <p>15 electronic, then I guess it would be similar, yes.</p> <p>16 Q. Okay.</p> <p>17 A. But I think initially the foundation</p> <p>18 was focused on the targeted marketing aspect of the</p> <p>19 business, being able to do that.</p> <p>20 Q. Was Lockland Murdock involved in</p> <p>21 discussions concerning the acquisition of CCMI?</p> <p>22 A. I don't remember.</p>	<p style="text-align: right;">Page 69</p> <p>1 these individuals?</p> <p>2 A. No. I don't remember where the</p> <p>3 feedback came from to receive. It may have gone</p> <p>4 directly to Paul. I just don't recollect.</p> <p>5 Q. Well, what feedback, if any, did you</p> <p>6 get from Mr. Carlucci concerning your memo?</p> <p>7 A. I don't remember the exact feedback.</p> <p>8 Q. How about generally? Do you remember</p> <p>9 the general feedback you received?</p> <p>10 A. Generally we were allowed to proceed.</p> <p>11 Q. Did he place any restrictions on your</p> <p>12 ability to proceed?</p> <p>13 A. I don't remember. I don't remember</p> <p>14 the exact conversation we may have had on the deal.</p> <p>15 Q. Did you have free reign to negotiate</p> <p>16 a deal with CCMI?</p> <p>17 A. No.</p> <p>18 Q. Okay.</p> <p>19 Who was the ultimate decision-maker</p> <p>20 or decision-makers relative to the transaction?</p> <p>21 A. I would state that we received</p> <p>22 approval to move ahead with the offer generally as I</p>

18 (Pages 66 to 69)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 70</p> <p>1 outlined in the memo of May 14th.</p> <p>2 To the extent that we were going to</p> <p>3 move forward and close generally on those terms,</p> <p>4 this would have been something that Paul and I would</p> <p>5 have discussed and moved forward with.</p> <p>6 To the extent the terms changed</p> <p>7 substantially, we would have had to go back and most</p> <p>8 likely discuss it again with someone at the News</p> <p>9 Corp. office.</p> <p>10 Q. Whose permission did you need to have</p> <p>11 the ability to extend a verbal offer?</p> <p>12 A. I don't recall. I most likely</p> <p>13 discussed it with Paul.</p> <p>14 Q. And Paul was in agreement that you</p> <p>15 could extend a verbal offer? And by Paul I mean</p> <p>16 Paul Carlucci.</p> <p>17 A. I don't remember.</p> <p>18 Q. Well, I take it you wouldn't have</p> <p>19 extended a verbal offer to CCMI on May 7th, 1999</p> <p>20 without some approval.</p> <p>21 Is that correct?</p> <p>22 A. Correct.</p>	<p style="text-align: right;">Page 72</p> <p>1 in situations where a substantial investment is</p> <p>2 proposed to be made in an asset?</p> <p>3 MR. KATZ: Objection.</p> <p>4 A. When?</p> <p>5 Q. Let's say in the 1999 time period.</p> <p>6 A. I don't recall.</p> <p>7 Q. How about now?</p> <p>8 MR. KATZ: Objection.</p> <p>9 A. I don't recall the exact levels.</p> <p>10 There are certain levels of investments where it</p> <p>11 gets reviewed by News Corporation.</p> <p>12 Q. And I take it by virtue of the fact</p> <p>13 that you were sending this memo to Mr. Nallen and</p> <p>14 Mr. Jacobs that this type of investment required</p> <p>15 some form of assent from News Corp.</p> <p>16 A. Yes.</p> <p>17 Q. Are you aware of an actual</p> <p>18 presentation that was made to News Corp. for the</p> <p>19 CCMI investment?</p> <p>20 A. I don't recall.</p> <p>21 Q. Do you remember a presentation that</p> <p>22 was made to News Corp. which concerned PlanetU,</p>
<p style="text-align: right;">Page 71</p> <p>1 Q. And my question to you is who</p> <p>2 provided you with the approval?</p> <p>3 A. I don't recall.</p> <p>4 Q. How was the approval provided to you?</p> <p>5 A. I don't recall.</p> <p>6 Q. In your experience with News America</p> <p>7 Marketing or News Corp. is there a manner in which</p> <p>8 approvals to make, potentially make a \$3 million</p> <p>9 investment, is there a manner in which approvals are</p> <p>10 sought and obtained?</p> <p>11 A. I don't recall exactly the timing of</p> <p>12 the approvals, how it related to this entity.</p> <p>13 Before I would have made a verbal offer, Paul and I</p> <p>14 would have discussed it. Whether we discussed it</p> <p>15 with anyone at News Corporation at that time I just</p> <p>16 don't recall.</p> <p>17 Q. Okay. My question was a little</p> <p>18 different. Was there a practice -- strike that.</p> <p>19 I'm going to ask you a different question. I</p> <p>20 withdraw the one from two before.</p> <p>21 Was there a practice or procedure</p> <p>22 which News America Marketing or News Corp. follows</p>	<p style="text-align: right;">Page 73</p> <p>1 SoftCard, and CCMI?</p> <p>2 A. I don't recall.</p> <p>3 Q. Is there a typical practice employed</p> <p>4 by News Corp. as to how their assent to move forward</p> <p>5 with a particular proposal is articulated either in</p> <p>6 writing or verbally?</p> <p>7 MR. KATZ: Objection.</p> <p>8 A. What do you mean by typical practice?</p> <p>9 I only have relevance to the divisions I work in so</p> <p>10 I can't propose to understand what happens in other</p> <p>11 parts of the company I have no exposure to.</p> <p>12 Q. That's a fair comment.</p> <p>13 Given your experience and the</p> <p>14 projects that you have been involved with, is there</p> <p>15 a typical practice or procedure that News Corp.</p> <p>16 follows when its approval to proceed with a</p> <p>17 prospective transaction is provided?</p> <p>18 A. In investments that I'm involved in,</p> <p>19 I typically will discuss those with whoever my boss</p> <p>20 is at the time. And depending on the size of the</p> <p>21 investment and the nature of the investment and kind</p> <p>22 of where we are in the process, there's a dialogue</p>

19 (Pages 70 to 73)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 74</p> <p>1 at a certain level that occurs with certainly some 2 individuals of News Corporation. 3 Q. And does that approval or disapproval 4 manifest itself in writing? 5 A. No, not always. 6 MR. KATZ: Dave, you're obviously 7 free to ask relevant questions and all that, 8 but I'm just suggesting that you're getting 9 pretty far afield with this piece. 10 MR. RICH: I am simply trying to 11 ascertain whether there was a written 12 communication between News Corp. and 13 News America Marketing relative to this 14 transaction, and he testified that he didn't 15 know so I'm inquiring as to whether there 16 is a protocol or procedure in place at 17 News Corp. as to how this is done. 18 MR. KATZ: And I think he's pretty 19 much answered. 20 Q. Focusing back to Exhibit 14, at the 21 middle of the page it says, "Bill Adams seems like a 22 key asset within the company."</p>	<p style="text-align: right;">Page 76</p> <p>1 Do you see that? 2 A. Yes. 3 Q. From where did you obtain that 4 information? 5 A. I don't know from where we obtained 6 that information. That was our opinion as of the 7 time we wrote this. 8 Q. At the bottom of the page in section 9 2, you write, "CCMI's consulting and marketing 10 services are strategically important because the 11 company offers highly tangible promotion services 12 not readily available in the marketplace today." 13 Do you see that? 14 A. Where is that? 15 Q. Paragraph 2, first bullet point. 16 A. Number 2, full service provider. 17 Q. Exactly. Let me ask the question 18 again. 19 A. I see it. 20 Q. Why don't you just read that section 21 and then tell me when you're ready. 22 A. (Examining document.)</p>
<p style="text-align: right;">Page 75</p> <p>1 Do you see that? 2 A. Yes, I see it. 3 Q. Do you know who Bill Adams is? 4 A. Yes, I know who Bill Adams is. He 5 was the, I don't know his exact position but I 6 believe he was head of the software development, the 7 IT area of the company. 8 Q. Did you share Mr. Beck's opinion that 9 Bill Adams was a key asset of CCMI? 10 A. I believe Bill was an important 11 asset. 12 Q. I promised we'd return to Exhibit 13. 13 Let's get back to that. The middle of page 2 of 14 Exhibit 13, do you see the reference to the 15 management team? 16 Do you see that? 17 A. Yes. 18 Q. And you note that Mr. Fireman and 19 Ms. Raider both have developed strong relationships 20 with retailers and packaged good manufacturers based 21 upon their expertise in data management and targeted 22 marketing?</p>	<p style="text-align: right;">Page 77</p> <p>1 I've read it. 2 Q. You'd agree with me that it was your 3 view in May of 1999 that CCMI was offering services 4 that weren't readily available in the marketplace? 5 A. That was our view. 6 Q. And you felt that that was 7 strategically important to News America Marketing? 8 MR. KATZ: Objection. 9 A. (Examining document.) 10 Again I would look at that as 11 something that's strategically important as we 12 looked at the business trying to expand it to the 13 targeted marketing business. 14 Q. The next bullet point talks about 15 News America's strong relationship with supermarket 16 retailers and consumer packaged goods manufacturers 17 and the fact that those relationships offer 18 significant expansion opportunities for CCMI. 19 Right? 20 A. That's what it says. 21 Q. And that was your belief? 22 A. That was our hope.</p>

20 (Pages 74 to 77)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 78</p> <p>1 Q. Now, the fourth bulleted paragraph 2 states, "By leveraging a coordinated sales effort, 3 New America's sales force will be trained to 4 incorporate CCMI's products into its single source 5 portfolio." 6 First of all, what CCMI products were 7 you referring to in this bullet point? 8 A. I don't remember. I don't know if 9 those products existed or if those products were 10 going to be created. 11 Q. Okay. 12 Well, your memo doesn't speak to 13 products. It speaks in the present tense. 14 Is that correct? 15 A. I don't recall what those products 16 are. 17 Q. Okay. 18 And was it your intention in May 19 of 1999 that the News America sales force would be 20 trained to incorporate CCMI's products into their 21 portfolios? 22 A. That was the opportunity we</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. Okay. 2 And do you remember them providing 3 you with proposed projections, financial 4 projections? 5 A. Yes. I believe I stated that at our 6 first meeting they had projections that they were 7 hoping the business would grow to. 8 MR. RICH: Let me mark this as 9 the next exhibit. 10 (Exhibit DeVoe-15, printout of 11 PowerPoint presentation entitled Three 12 Essential Elements, Bates FR4897-4901, 13 received and marked for identification.) 14 Q. We've marked as DeVoe Exhibit 15 a 15 document which is Bates stamped FR4897 through 4901. 16 Do you see that? 17 A. Yes. 18 Q. Do you have any memory of seeing this 19 document? 20 A. I don't. 21 Q. Is it your testimony that you don't 22 have any memory one way or the other as to whether a</p>
<p style="text-align: right;">Page 79</p> <p>1 highlighted, yes. 2 Q. And that was your expectation? 3 MR. KATZ: Objection. 4 A. I think that was the opportunity. 5 Q. Well, what's the difference between 6 an opportunity and an expectation from your 7 perspective? 8 A. These are opportunities that we 9 thought we were going to move forward with. Whether 10 we were going to be successful at doing some of 11 these things or not is open to interpretation. 12 Q. But I take it these were 13 opportunities that you expected to take advantage of 14 in moving forward. 15 A. These were opportunities that we 16 looked at attempting to pursue, yes. 17 Q. Did you ever tell anyone that you saw 18 CCMI as a \$100 million business? 19 A. I don't recall saying that. 20 Q. Do you remember Ms. Raider or 21 Mr. Fireman providing you with a business plan? 22 A. I don't remember.</p>	<p style="text-align: right;">Page 81</p> <p>1 PowerPoint presentation was made to you in your 2 initial meeting? 3 A. I don't remember. 4 Q. You do remember that Ms. Raider was 5 big into PowerPoint presentations I take it? 6 MR. KATZ: Objection. 7 A. I don't remember. 8 Q. Flipping through Exhibit 15 doesn't 9 refresh your memory that at least these materials 10 were provided to you in the initial portion of 11 your -- 12 A. I just don't remember. 13 MR. RICH: Mark this, please, as 14 the next exhibit. 15 (Exhibit DeVoe-16, document entitled 16 SG&A Expenses, Bates FR3461, received and 17 marked for identification.) 18 MR. RICH: Mark this, too, please. 19 (Exhibit DeVoe-17, document entitled 20 Revenue Assumptions, Bates FR4889, received 21 and marked for identification.) 22 Q. Mr. DeVoe, I'm showing you two</p>

21 (Pages 78 to 81)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 82</p> <p>1 documents, one which we've marked as DeVoe Exhibit 2 16 and the second is DeVoe Exhibit 17, Bates stamped 3 FR3461 and FR4889 respectively. 4 Do you have any memory of seeing 5 these documents before? 6 A. I don't. 7 Q. Do you have any memory of receiving 8 documentation reflecting financial forecasts on both 9 the revenue side and the expense side from CCMI? 10 A. No, I don't recall the specific 11 documentation. I know when we were negotiating the 12 earn-out, there was dialogue on the gross profit 13 percentage. I don't specifically recall this. 14 Q. You recognize these, recognizing that 15 you don't have a specific memory, as being forecast 16 or projections going forward. Correct? 17 A. Yes. They look to be projections. 18 Q. You don't have a memory of ever 19 receiving any kind of forward-looking projections 20 from folks at CCMI in the 1999 time period? 21 MR. KATZ: Objection. 22 A. I remember they had the, when we</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. We'll come back to that. 2 I apologize if I asked this before 3 but sitting here today you don't have any 4 independent memory of what you did to study the 5 industry that CCMI was in before you undertook 6 the -- 7 A. I don't. 8 Q. But generally you understand that 9 some industry knowledge was acquired by your group 10 in moving forward? 11 A. I would suggest that given the size 12 of the investment, relatively small investment for a 13 company of our size and previously I talked about 14 this as potentially maybe an R&D investment in some 15 respects because we were buying software and we were 16 hoping that this business could grow into something 17 larger that I'm not really sure exactly how much 18 industry information or study was completed. 19 Q. Did you put any value in CCMI's 20 knowledge of gathering data from the retailer's 21 point of sale? 22 A. We put \$3 million of value on the</p>
<p style="text-align: right;">Page 83</p> <p>1 first met they had a projection of the business 2 where they thought the business was going to develop 3 and grow to what their forecast was for. I just 4 don't remember the specific level of detail that was 5 provided or the information that was provided along 6 with that. 7 Q. Do you recall ever telling Ms. Raider 8 or Mr. Fireman that you thought News America could 9 deliver on their business plan? 10 MR. KATZ: Objection. 11 A. No, I don't recall. 12 Q. Did you have any discussions with 13 them to the best of your recollection about their 14 business plan or their business model? 15 MR. KATZ: Objection. 16 A. I don't remember specifically 17 discussing their business model with them. 18 Q. Okay. 19 You would agree with me that the 20 earn-out component of the stock purchase agreement 21 has a five-year earn-out? 22 A. I would have to go back and look.</p>	<p style="text-align: right;">Page 85</p> <p>1 company and we were certainly prepared to pay more 2 than that if the business performed certainly how 3 CCMI hoped it would perform and how we were hopeful 4 it would perform. 5 Q. What, if anything, did your due 6 diligence team do to verify the finances and the 7 financial documentation of CCMI? 8 A. I don't recall the specific 9 information that was evaluated. I do remember 10 sending individuals from the News America Marketing 11 finance group to go up and perform due diligence 12 procedures, which I assume we provided them with a 13 due diligence list, and they provided us with 14 information. And we went through that and certainly 15 typically in the process you may have things that 16 are unresolved or resolved and I don't know what the 17 end result of that diligence process was. 18 Q. Do you have any memory of a specific 19 issue that arose during the due diligence process, 20 something you weren't receiving that you thought you 21 needed? 22 A. I don't recall a specific issue.</p>

22 (Pages 82 to 85)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 86</p> <p>1 Clearly we felt we were comfortable to close the</p> <p>2 deal based on the information that we had or didn't</p> <p>3 have and we were prepared to take the risk to the</p> <p>4 extent there was information out there that we did</p> <p>5 receive.</p> <p>6 Q. Did Mr. Rubin have an opinion as to</p> <p>7 whether to go forward with the acquisition?</p> <p>8 A. Yes. Jon was supportive of the</p> <p>9 acquisition.</p> <p>10 Q. Did he explain to you why he was</p> <p>11 supportive of the acquisition?</p> <p>12 A. I don't recall his exact rationale or</p> <p>13 his reasons.</p> <p>14 Q. What about in a general sense?</p> <p>15 A. I just don't remember.</p> <p>16 Q. How about Mr. Lellouche? Was he</p> <p>17 supportive of the idea?</p> <p>18 A. I don't recall Henry's opinion.</p> <p>19 Q. Did you have an opinion as to the</p> <p>20 projected finances prepared by CCMI?</p> <p>21 A. Can you clarify?</p> <p>22 Q. Sure. Let's go back to Exhibit 13.</p>	<p style="text-align: right;">Page 88</p> <p>1 here, I just don't recall.</p> <p>2 Q. Do you remember having any</p> <p>3 communications with any representative of CCMI in</p> <p>4 which you informed them that their model was</p> <p>5 aggressive?</p> <p>6 A. I don't remember that.</p> <p>7 Q. How much did News America pay for</p> <p>8 PlanetU?</p> <p>9 A. I don't recall the specific amount.</p> <p>10 Q. Was it in excess of \$20 million?</p> <p>11 A. I don't recall the specific amount,</p> <p>12 but I believe the total amount was in excess of</p> <p>13 20 million, yes.</p> <p>14 Q. And SoftCard was about 7 million?</p> <p>15 A. Again I don't recall the specific</p> <p>16 amount. I believe it was higher than 5 million,</p> <p>17 though.</p> <p>18 Q. Okay.</p> <p>19 And as part of the overall strategies</p> <p>20 you described generally in Exhibit 13 to start an</p> <p>21 Internet coupon site?</p> <p>22 A. I think we were evaluating doing</p>
<p style="text-align: right;">Page 87</p> <p>1 On page 3 there's a reference in the middle of the</p> <p>2 page to CCMI's model and the assumptions that CCMI</p> <p>3 was making.</p> <p>4 A. Yes.</p> <p>5 Q. Did you have an opinion about their</p> <p>6 model?</p> <p>7 MR. KATZ: Objection.</p> <p>8 A. I don't recall a specific opinion.</p> <p>9 I know the results we had were less than what they</p> <p>10 had.</p> <p>11 Q. So you have no memory of feeling as</p> <p>12 if their model was unrealistic or realistic or</p> <p>13 somewhere in between?</p> <p>14 A. I would say my general feeling of</p> <p>15 their model and our model was progressive. We were</p> <p>16 talking about a business that was not making much</p> <p>17 money growing into a much larger business making</p> <p>18 more money, so those were aggressive assumptions.</p> <p>19 Q. And did you articulate the fact that</p> <p>20 you believed the assumptions to be aggressive in any</p> <p>21 document?</p> <p>22 A. Unless it's in the documents that are</p>	<p style="text-align: right;">Page 89</p> <p>1 that, yes.</p> <p>2 Q. And that ultimately became</p> <p>3 smartsource.com?</p> <p>4 A. Sounds right. It sounds correct.</p> <p>5 Q. You have no memory of having any</p> <p>6 discussions with Ms. Raider or Mr. Fireman about</p> <p>7 funding their business plan?</p> <p>8 A. What do you mean by funding?</p> <p>9 MR. KATZ: Objection.</p> <p>10 Q. Well, providing them with the</p> <p>11 financial resources necessary as set forth in their</p> <p>12 business plan.</p> <p>13 A. All I can remember is what we set</p> <p>14 forth -- I mean the only thing I would suggest is</p> <p>15 what was set forth in the final agreement, what we</p> <p>16 agreed to.</p> <p>17 Q. Okay. But beyond what was set forth</p> <p>18 in the final agreement, you have no independent</p> <p>19 memory sitting here today of discussions that may</p> <p>20 have occurred relative to the business plan or the</p> <p>21 funding of the business plan?</p> <p>22 A. No. Any commitment or funding would</p>

23 (Pages 86 to 89)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 90</p> <p>1 have been negotiated in the final agreement.</p> <p>2 Q. My question is a little different.</p> <p>3 I'm asking about communications that</p> <p>4 you may have had separate and distinct from what may</p> <p>5 or may not have ended up in the final agreement.</p> <p>6 A. I don't remember. I don't remember</p> <p>7 the communication of me -- there was communication,</p> <p>8 discussion, and negotiation regarding the topic of</p> <p>9 what they thought they needed to run the business.</p> <p>10 Q. Okay.</p> <p>11 And are you able to recall the</p> <p>12 details of any of those conversations?</p> <p>13 A. No.</p> <p>14 Q. Did those communications typically</p> <p>15 occur over the telephone or in person?</p> <p>16 MR. KATZ: Objection.</p> <p>17 A. I don't remember.</p> <p>18 Q. Okay.</p> <p>19 Were there multiple communications to</p> <p>20 the best of your memory?</p> <p>21 A. To the best of my knowledge there was</p> <p>22 a lot of dialogue with Mr. Les Charms.</p>	<p style="text-align: right;">Page 92</p> <p>1 A. I don't recall.</p> <p>2 Q. You don't recall one way or another?</p> <p>3 A. No.</p> <p>4 Q. I take it from your previous answer</p> <p>5 there were a number of conversations that you</p> <p>6 participated in relative to the business terms?</p> <p>7 A. Conversations and email if I</p> <p>8 remember.</p> <p>9 Q. We'll get to the documentation</p> <p>10 shortly but does anything stand out in your mind as</p> <p>11 being particularly memorable relative to your</p> <p>12 discussions with Les Charm concerning business</p> <p>13 terms?</p> <p>14 A. The only thing I would point out is</p> <p>15 because we were getting near the end of the deal and</p> <p>16 we were going to make a decision on whether we were</p> <p>17 going to proceed or not to go forward with the -- we</p> <p>18 were in the process and we had been negotiating for</p> <p>19 a while and we just had to decide if we were going</p> <p>20 to get the deal done or not.</p> <p>21 There was a term that Les objected to</p> <p>22 fairly strongly in the document that enabled</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. Okay. And I think it's actually</p> <p>2 singular, Charm.</p> <p>3 (Whereupon, a discussion was held</p> <p>4 off the record.)</p> <p>5 Q. You understood Mr. Charm to be whom?</p> <p>6 A. I understand he was representing Ann</p> <p>7 and Bob along with Goodwin Procter, I believe.</p> <p>8 Q. Was he your primary contact on the</p> <p>9 CCMI side relative to negotiating business terms?</p> <p>10 A. Yes.</p> <p>11 Q. Were there other people with whom you</p> <p>12 discussed and negotiated business terms?</p> <p>13 A. I believe we had calls where Les was</p> <p>14 on the call along with Ann and Bob and I would be on</p> <p>15 the phone with Jon Rubin, and there were other</p> <p>16 calls, I guess, where our respective outside</p> <p>17 counsels also were involved in dialogue.</p> <p>18 Q. Do you remember having any -- and</p> <p>19 this is leading up to the August 13th, 1999</p> <p>20 execution of the stock purchase agreement -- did you</p> <p>21 have private communications with either Ms. Raider</p> <p>22 or Mr. Fireman?</p>	<p style="text-align: right;">Page 93</p> <p>1 News America to have significant flexibility on how</p> <p>2 they ran the business and I remember Less stating to</p> <p>3 Ann and Bob that he thought this was problematic and</p> <p>4 letting them know that he wasn't sure if they should</p> <p>5 go forward under this because he thought it could</p> <p>6 impact their ability to run the business.</p> <p>7 I think at the time we talked about</p> <p>8 why we needed it, and at the time I think our view,</p> <p>9 we told him, is that we were trying to move forward</p> <p>10 on the business and we were hopeful that we were</p> <p>11 able to build the business together going forward</p> <p>12 but ultimately we were buying the business and we</p> <p>13 needed flexibility and in how we were going to run</p> <p>14 the business.</p> <p>15 That was a critical point as we got</p> <p>16 near the end of the deal and it's just memorable</p> <p>17 because I think it was kind of it was either we were</p> <p>18 going to do the deal or we weren't going to do the</p> <p>19 deal. That in particular was a concern for them.</p> <p>20 Q. Now, was this a single conversation</p> <p>21 to your memory or was this a series of conversations?</p> <p>22 A. The conversation I remember was a</p>

24 (Pages 90 to 93)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 94</p> <p>1 conference call. I think it was Jon Rubin and 2 myself in my office in, I think it was in Norwalk, 3 Connecticut at the time, and I believe Les, Ann, and 4 Bob. I don't know, again, the locations, if they 5 were together or not. 6 Q. Okay. 7 And this is when the conversation as 8 you described it where Mr. Charm was objecting 9 fairly strongly to a provision that provided NAM 10 significant flexibility. 11 Is that correct? 12 A. Yes. His issue was that issue. A 13 lot of the other time was really focused on the 14 gross profit calculation. Those were the two 15 points, as I remember, spending time on with him. 16 Q. And I think you said that Les 17 objected fairly strongly and told Ann and Bob this 18 was problematic? 19 A. Yes. 20 Q. And he told them that in your 21 presence or he told you that he had told them that 22 prior to the conference call?</p>	<p style="text-align: right;">Page 96</p> <p>1 that we did get back on the phone. It was an 2 outstanding issue. 3 Q. So ultimately when the conference 4 call resumed, what, if anything, did Mr. Charm, 5 Ms. Raider, or Mr. Fireman say about this concern 6 that Mr. Charm had raised? 7 A. I think they were going to -- it 8 wasn't something that they could resolve at that 9 point. It was something that they had to take under 10 further consideration. 11 Q. Okay. 12 And do you remember any follow-up 13 conversations substantively about this point with 14 anybody on the CCMI side? 15 A. No. 16 Q. You never heard back from them one 17 way or the other as to whether -- 18 A. We did hear back because it ended up 19 the term was accepted in the agreement. I just 20 don't recall any specific -- I'm certain there must 21 have been conversations after that point regarding 22 that particular language in the document. I just</p>
<p style="text-align: right;">Page 95</p> <p>1 A. On the phone. It was an issue. It 2 was an issue from a negotiation point that he was 3 representing that it may be a very difficult one to 4 get over. 5 Q. Okay. 6 And was he having -- and I apologize 7 for what may be a mundane question -- was Mr. Charm 8 having this discussion with Ms. Raider and 9 Mr. Fireman while you were on the phone or was he 10 recounting to you a prior conversation he had 11 had with them? 12 A. While we were on the phone. 13 Q. And what was Ms. Raider and 14 Mr. Fireman's response to Mr. Charm's comment that 15 this was problematic? 16 A. I remember them taking a break to 17 talk about it. 18 Q. Okay. 19 And did the conference call 20 terminate? 21 MR. KATZ: Ever? 22 A. I don't recall exactly. I believe</p>	<p style="text-align: right;">Page 97</p> <p>1 don't recall specific conversations. 2 MR. RICH: Mark this, please, as 3 the next exhibit. 4 (Exhibit DeVoe-18, 1-page fax 5 transmittal sheet dated 7-7-99, 1-page 6 document entitled CCMI Acquisition Open 7 Business Issues, and four fax log reports, 8 received and marked for identification.) 9 Q. Mr. DeVoe, I show you what's been 10 marked as Exhibit 18. It references a 11 teleconference going forward on July 8, 1999 and 12 then identifies some open business issues on page 2. 13 Seeing this document, does this 14 refresh your memory that the conference call which 15 you were referring to was a conference call held on 16 July 8 or could it have been another? 17 A. I'm not certain. 18 Q. Paragraph 5 of the open business 19 issues identifies conduct of business post-closing 20 and the buyer's obligation to support the business 21 during the earn-out period. 22 Do you see that?</p>

25 (Pages 94 to 97)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 98</p> <p>1 A. Yes.</p> <p>2 Q. And seeing this open issue, is</p> <p>3 this -- it seems this issue doesn't refresh your</p> <p>4 memory that the conversation which you were</p> <p>5 recounting was the conversation held in the</p> <p>6 conference call on July 8?</p> <p>7 A. I don't remember.</p> <p>8 Q. What, if anything, do you remember</p> <p>9 discussing on the conference call on July 8</p> <p>10 concerning the buyer's obligation to support the</p> <p>11 business during the earn-out period?</p> <p>12 A. I don't remember any details from</p> <p>13 this particular call. I can't recall if it was the</p> <p>14 same call I'm referring to or not. I just don't</p> <p>15 know.</p> <p>16 Q. Putting aside whether there was a</p> <p>17 conference call or not a conference call or the date</p> <p>18 of the conference call, do you have a recollection</p> <p>19 of having discussions with any individuals on CCMI's</p> <p>20 side relative to the buyer's obligation to support</p> <p>21 the business during the earn-out period?</p> <p>22 A. My recollection is there were areas</p>	<p style="text-align: right;">Page 100</p> <p>1 for marketing solutions.</p> <p>2 And I think there was an area where</p> <p>3 the business needed further investment from a</p> <p>4 software standpoint. I think we looked at investing</p> <p>5 in the business from a capital, investing capital in</p> <p>6 the business.</p> <p>7 Q. These were areas of discussion that</p> <p>8 went on leading up to the execution of the stock</p> <p>9 agreement?</p> <p>10 A. That was an ongoing dialogue, yes.</p> <p>11 Q. And I take it that was an issue that</p> <p>12 was of some importance to Ms. Raider and</p> <p>13 Mr. Fireman?</p> <p>14 MR. KATZ: Objection.</p> <p>15 A. You have to ask them.</p> <p>16 Q. Okay.</p> <p>17 And did they tell you that these were</p> <p>18 important aspects of the deal from their perspective</p> <p>19 going forward?</p> <p>20 A. I don't recall.</p> <p>21 Q. Squadron, Ellenoff was acting as</p> <p>22 counsel to News America?</p>
<p style="text-align: right;">Page 99</p> <p>1 that we were going to attempt to, areas in which we</p> <p>2 were hoping to support the business, yes,</p> <p>3 post-closing. I think from the point of keeping the</p> <p>4 business moving and where we wanted to head with the</p> <p>5 business, I think there were a variety of different</p> <p>6 areas we wanted to explore.</p> <p>7 Q. Okay.</p> <p>8 What were those?</p> <p>9 A. I think if I recall one area was,</p> <p>10 again, utilizing the sales force in News America</p> <p>11 Marketing to promote the product. And as follow-up</p> <p>12 to that, I think there were going to be areas where</p> <p>13 I think primarily Ann on that one was going to try</p> <p>14 to take the lead working with the News America sales</p> <p>15 force to see what kind of progress we could make.</p> <p>16 There was another area, again which I</p> <p>17 think was referenced in the other memo, where we</p> <p>18 were trying to from a retail standpoint see what we</p> <p>19 could do on a retailer standpoint to have better</p> <p>20 relationships to get access to their data, manage</p> <p>21 their data, and look at opportunities to utilize</p> <p>22 that data for marketing solutions, utilize the data</p>	<p style="text-align: right;">Page 101</p> <p>1 A. Yes.</p> <p>2 Q. And particularly Ms. Wolfe?</p> <p>3 A. Yes.</p> <p>4 Q. The open business issues document</p> <p>5 prepared by her reflected the conduct of the</p> <p>6 business post-closing?</p> <p>7 A. That's right.</p> <p>8 Q. And so it was a concern to at least</p> <p>9 someone how the business was going to be conducted</p> <p>10 post-closing?</p> <p>11 A. Yes. As I stated earlier, there were</p> <p>12 a lot of areas which we wanted to work with CCMI in</p> <p>13 building the business.</p> <p>14 We also stated as we were finalizing</p> <p>15 the agreement that ultimately we needed flexibility</p> <p>16 to manage the business and run the business</p> <p>17 ultimately as we saw appropriate.</p> <p>18 Q. Who did you tell that to?</p> <p>19 A. I believe it was in the final</p> <p>20 agreement.</p> <p>21 Q. Okay.</p> <p>22 Who did you tell that to other than</p>

26 (Pages 98 to 101)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 102</p> <p>1 having it listed in the final agreement?</p> <p>2 A. That subject came up on the same</p> <p>3 conference call that I referenced earlier.</p> <p>4 Q. Did it come up any other times?</p> <p>5 A. I don't remember any other specific</p> <p>6 other time.</p> <p>7 Q. Okay.</p> <p>8 The issues about supporting the</p> <p>9 business that you mentioned, the sales force and the</p> <p>10 other two items, were those issues that recurred</p> <p>11 throughout these negotiations?</p> <p>12 A. I don't know how often they were</p> <p>13 discussed. I believe they may have been in the</p> <p>14 agreement at some point.</p> <p>15 Q. Okay.</p> <p>16 Do you remember them being discussed</p> <p>17 orally between and among CCMI and News America?</p> <p>18 A. I remember them being discussed as</p> <p>19 part of the negotiation of the business and I know</p> <p>20 in some of those areas we discussed them as it</p> <p>21 impacted the gross profit calculation if I recall.</p> <p>22 Q. The discussions about further</p>	<p style="text-align: right;">Page 104</p> <p>1 spending money to enlarge their staff?</p> <p>2 A. I don't remember that. I primarily</p> <p>3 recall, I remember the specific request for capital</p> <p>4 investment.</p> <p>5 I don't recall any specific request</p> <p>6 on staff other than there may have been projections</p> <p>7 as we calculated the percentage of gross profit what</p> <p>8 we thought staffing levels might be as it impacted</p> <p>9 the gross profit calculation.</p> <p>10 Q. But just to close the loop, you don't</p> <p>11 have a specific memory about communications with</p> <p>12 Ms. Raider or Mr. Fireman beyond just wanting</p> <p>13 capital, how that capital would be spent?</p> <p>14 A. I don't recall the specifics of how</p> <p>15 they proposed to spend it.</p> <p>16 Q. Okay.</p> <p>17 How about communications with CCMI</p> <p>18 prior to the execution of the stock agreement about</p> <p>19 CCMI being run as an autonomous division?</p> <p>20 Do you remember having any</p> <p>21 conversations with Ms. Raider and Mr. Fireman about</p> <p>22 that?</p>
<p style="text-align: right;">Page 103</p> <p>1 investment in the form of capital, do you remember</p> <p>2 the specifics of what was being discussed or</p> <p>3 contemplated?</p> <p>4 A. I remember that CCMI wanted a</p> <p>5 specific amount of capital for us to agree to spend,</p> <p>6 and I don't recall if we ever agreed to spend that</p> <p>7 in the -- I don't recall if we ever agreed in the</p> <p>8 document to do that or not.</p> <p>9 I think my position during the</p> <p>10 negotiation was, you know, capital has to get</p> <p>11 approved through the company as we move forward and</p> <p>12 CCMI might want a specific commitment.</p> <p>13 I do not know how it ended up</p> <p>14 manifesting itself in the agreement, if ultimately</p> <p>15 News America Marketing agreed to spend a certain</p> <p>16 amount or if CCMI agreed that capital would be spent</p> <p>17 as approved going forward</p> <p>18 Q. Do you have any memory of CCMI</p> <p>19 indicating to you how they would like the capital</p> <p>20 expended?</p> <p>21 A. I don't remember.</p> <p>22 Q. Do you remember them talking about</p>	<p style="text-align: right;">Page 105</p> <p>1 A. No, I don't recall us ever agreeing</p> <p>2 to or having a conversation about being autonomous</p> <p>3 from News America Marketing.</p> <p>4 Q. Okay.</p> <p>5 Do you have any recollection of</p> <p>6 discussing with Ms. Raider or Mr. Fireman or</p> <p>7 Mr. Charm Ms. Raider or Mr. Fireman running and</p> <p>8 managing CCMI going forward?</p> <p>9 A. I recall that part of the agreement</p> <p>10 that we executed employment agreements that Ann and</p> <p>11 Bob wished to stay in Boston.</p> <p>12 I recall having dialogue as it</p> <p>13 relates to kind of the business and the structure</p> <p>14 and where there may be efficiencies as it relates to</p> <p>15 doing certain functions out of Connecticut.</p> <p>16 And I think the employment agreements</p> <p>17 that were done suggested that Ann and Bob were going</p> <p>18 to be involved in running the business.</p> <p>19 Q. My question is a little bit different</p> <p>20 and I want to focus you on communications that you</p> <p>21 had with Ann or Bob or Les Charm prior to executing</p> <p>22 the stock purchase agreement concerning their roles</p>

27 (Pages 102 to 105)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 106</p> <p>1 in CCMI going forward.</p> <p>2 A. I don't remember specific</p> <p>3 conversations.</p> <p>4 Q. As long as you mentioned the issue</p> <p>5 about staying in Boston, do you remember that</p> <p>6 specifically coming up in conversations prior to the</p> <p>7 stock agreement being signed?</p> <p>8 A. I remember they, I believe, as I</p> <p>9 mentioned before, we talked about, I believe there</p> <p>10 was dialogue about having some of those functions</p> <p>11 and doing certain functions in Connecticut.</p> <p>12 And the issue did come up that Ann</p> <p>13 and Bob wanted to make sure that they were going to</p> <p>14 stay in Boston. They didn't want to be in a</p> <p>15 position where they had to be moved to Connecticut.</p> <p>16 Q. And what was the response from</p> <p>17 News America's side?</p> <p>18 A. We agreed to let them I believe</p> <p>19 operate out of, Ann and Bob operate out of Boston.</p> <p>20 MR. RICH: Why don't we break for</p> <p>21 lunch.</p> <p>22 (Luncheon recess taken from</p>	<p style="text-align: right;">Page 108</p> <p>1 AFTERNOON SESSION</p> <p>2 DAVID F. DeVoe, JR.,</p> <p>3 conducting business at</p> <p>4 Fox Entertainment Group, Inc.,</p> <p>5 101 West Pico Boulevard,</p> <p>6 Building 100, Room 5120,</p> <p>7 Los Angeles, California 90035-0057,</p> <p>8 residing at 51 Colony Road,</p> <p>9 Westport, Connecticut 06880,</p> <p>10 having been previously duly sworn by the notary</p> <p>11 public, continued to be examined and testified</p> <p>12 as follows:</p> <p>13 CONTINUED EXAMINATION BY MR. RICH:</p> <p>14 Q. Good afternoon, Mr. DeVoe.</p> <p>15 A. Good afternoon.</p> <p>16 Q. When we broke, we were in the midst</p> <p>17 of discussing communications that were ongoing</p> <p>18 relative to the negotiation of the stock purchase</p> <p>19 agreement. Do you remember that testimony</p> <p>20 generally?</p> <p>21 A. Yes.</p> <p>22 Q. Okay.</p>
<p style="text-align: right;">Page 107</p> <p>1 12:19 p.m. to 1:09 p.m.)</p> <p>2 (Rest of page intentionally left</p> <p>3 blank.)</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 109</p> <p>1 I want to show you a few email</p> <p>2 communications that you had.</p> <p>3 (Exhibit DeVoe-19, email dated</p> <p>4 6-23-99, Bates NAM01298, received and</p> <p>5 marked for identification.)</p> <p>6 Q. Mr. DeVoe, I show you what's been</p> <p>7 marked as Exhibit 19, which is Bates stamped</p> <p>8 NAM01298, an email exchange between yourself and</p> <p>9 Mr. Charm on June 23rd, 1999.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. And specifically I draw your</p> <p>13 attention to number 12 of Mr. Charm's email, which</p> <p>14 is about three-quarters of the way down his email at</p> <p>15 the bottom of the page.</p> <p>16 A. Yes.</p> <p>17 Q. It says, "Lastly Bob and Ann need a</p> <p>18 statement that News America and the new CCMI will</p> <p>19 undertake a best efforts to have its salespeople at</p> <p>20 no cost to CCMI sell for CCMI and that New America</p> <p>21 will not hinder CCMI and the shareholders from</p> <p>22 earning additional purchase price."</p>

28 (Pages 106 to 109)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 110</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. And was that a discussion you recall</p> <p>4 having with Mr. Charm either orally or via email?</p> <p>5 A. No, I remember not agreeing to it.</p> <p>6 Q. Okay.</p> <p>7 And how was that disagreement</p> <p>8 manifested?</p> <p>9 A. I don't think there's anything in the</p> <p>10 agreement that states there's a best efforts -- I</p> <p>11 mean I don't think there's anything in the agreement</p> <p>12 that outlines what he's asking for.</p> <p>13 Q. Okay.</p> <p>14 Do you remember having any</p> <p>15 discussions about it?</p> <p>16 A. I remember them requesting it. I</p> <p>17 remember us rejecting it. It doesn't appear I</p> <p>18 addressed it up above when I responded to it.</p> <p>19 Q. Okay.</p> <p>20 So do you recollect the manner in</p> <p>21 which your refusal to provide these -- strike that.</p> <p>22 Do you have a memory as to how you</p>	<p style="text-align: right;">Page 112</p> <p>1 MR. KATZ: Objection. You can</p> <p>2 answer.</p> <p>3 A. I don't believe that's a clause that</p> <p>4 we'd agree to under the deal. As I mentioned</p> <p>5 before, there are certain things that we had</p> <p>6 aspirations to do, and ultimately we were pretty</p> <p>7 clear we needed flexibility to operate the business.</p> <p>8 And I believe these asked to be sufficient asked</p> <p>9 that we would not agree to the -- I believe they</p> <p>10 were sufficient asked.</p> <p>11 Q. I'm sorry. I didn't understand you.</p> <p>12 A. He's asking for best efforts.</p> <p>13 Q. Okay.</p> <p>14 A. And we didn't agree to that. And</p> <p>15 then as far as what he meant, I don't believe I ever</p> <p>16 got to the conversation with him as to what he meant</p> <p>17 by not hinder CCMI and its shareholders from earning</p> <p>18 an additional purchase price. That would have been</p> <p>19 a dialogue I guess we would have to have had with</p> <p>20 him.</p> <p>21 Q. But you don't remember it?</p> <p>22 A. No.</p>
<p style="text-align: right;">Page 111</p> <p>1 communicated to Mr. Fireman and Ms. Raider or</p> <p>2 Mr. Charm that News America was unwilling to agree</p> <p>3 to these terms?</p> <p>4 A. No.</p> <p>5 Q. Why was News America unwilling to</p> <p>6 undertake to use its best efforts to have its</p> <p>7 salespeople sell for CCMI?</p> <p>8 MR. KATZ: Objection.</p> <p>9 A. It was just at a point where we were</p> <p>10 not going to agree to it.</p> <p>11 Q. Is there any reason why?</p> <p>12 A. We never agree to under a deal to</p> <p>13 undertake best efforts.</p> <p>14 Q. So it's a matter of policy that</p> <p>15 News America will never agree to use its best</p> <p>16 efforts as a provision of a contract?</p> <p>17 MR. KATZ: Objection.</p> <p>18 A. I can't speak to that. I don't know.</p> <p>19 Q. Okay.</p> <p>20 Now, why wouldn't News America agree</p> <p>21 that they wouldn't hinder CCMI and its shareholders</p> <p>22 from earning the additional purchase price?</p>	<p style="text-align: right;">Page 113</p> <p>1 Q. Was it News America's intent to</p> <p>2 hinder CCMI and its shareholders from earning the</p> <p>3 additional purchase price?</p> <p>4 MR. KATZ: Objection.</p> <p>5 A. No.</p> <p>6 Q. Okay.</p> <p>7 A. And we never did.</p> <p>8 Q. Okay.</p> <p>9 MR. RICH: We'll mark this as</p> <p>10 the next exhibit.</p> <p>11 (Exhibit DeVoe-20, 1-page email</p> <p>12 dated 7-9-99 and 1-page attachment entitled</p> <p>13 CCMI's Baseline Projections, Bates</p> <p>14 NAM01391-1392, received and marked for</p> <p>15 identification.)</p> <p>16 Q. Mr. DeVoe, I'm showing you a document</p> <p>17 we've marked as DeVoe Exhibit 20, which is Bates</p> <p>18 stamped NAM01391-1392.</p> <p>19 Do you recognize this document as an</p> <p>20 email with an attachment you sent to Mr. Charm on</p> <p>21 July 9, 1999?</p> <p>22 A. Yes.</p>

29 (Pages 110 to 113)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

Page 114	Page 116
<p>1 Q. And this attaches a spreadsheet?</p> <p>2 A. Yes.</p> <p>3 Q. Was this a spreadsheet that you</p> <p>4 prepared or someone in your office prepared on your</p> <p>5 behalf?</p> <p>6 A. I'm not sure.</p> <p>7 Q. Okay.</p> <p>8 But plainly you're attaching it?</p> <p>9 A. Yes.</p> <p>10 Q. And you're making some comments about</p> <p>11 the net effect. That's your word. Yes?</p> <p>12 A. (Examining document.)</p> <p>13 Yes.</p> <p>14 Q. Do you have a memory sitting here</p> <p>15 today of where the information that was used to</p> <p>16 prepare this spreadsheet came from?</p> <p>17 A. No.</p> <p>18 Q. Okay.</p> <p>19 There's a reference under sales and</p> <p>20 marketing for head count.</p> <p>21 Do you see that? It's the third</p> <p>22 block down.</p>	<p>1 should be so that people would understand and</p> <p>2 appreciate what the earn-out potential was?</p> <p>3 MR. KATZ: Objection. You can</p> <p>4 answer if you understand the question.</p> <p>5 A. (Examining document.)</p> <p>6 I believe it's a document as a result</p> <p>7 of a negotiation we had whereby what I recollect, I</p> <p>8 believe in the Exhibit 13 document I may have</p> <p>9 referenced a 12 percent earn-out and apparently in</p> <p>10 this document we've agreed to increase the earn-out</p> <p>11 for a specific reason. I don't recollect the</p> <p>12 specific reason.</p> <p>13 It seems like it's part of a</p> <p>14 negotiation where there's baseline projections</p> <p>15 above. It appears that selling and marketing costs</p> <p>16 have been added with some projection of detail</p> <p>17 below, and because of the addition of those costs</p> <p>18 and the gross margin calculation that there is a</p> <p>19 dialogue about increasing the earn-out percentage.</p> <p>20 That's what it appears to be</p> <p>21 Q. Okay.</p> <p>22 Nows, the first page references</p>
Page 115	Page 117
<p>1 A. Yes.</p> <p>2 Q. What is head count?</p> <p>3 A. Those would be employees.</p> <p>4 Q. Okay.</p> <p>5 And there's a reference in sales and</p> <p>6 marketing, an expense item for trade shows.</p> <p>7 A. Yes.</p> <p>8 Q. And so would you agree with me that</p> <p>9 you were at least contemplating through the</p> <p>10 provision of this spreadsheet that the projections</p> <p>11 in the budgets were as reflected in this document?</p> <p>12 A. These are projections. I'm not sure</p> <p>13 these are projections that my group did or</p> <p>14 projections that CCMI proposed that are summarized</p> <p>15 below.</p> <p>16 I mean they're not agreed-upon</p> <p>17 budgets. They were projections used to negotiate</p> <p>18 the earn-out percentage, the gross profit</p> <p>19 percentage.</p> <p>20 Q. And so regardless of where the data</p> <p>21 came from, these were numbers that were being used</p> <p>22 to determine what certain gross margin numbers</p>	<p>1 selling -- it says attached is the documents in</p> <p>2 incorporating the selling and marketing as discussed</p> <p>3 today.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. What were those discussions about</p> <p>7 selling and marketing?</p> <p>8 A. I don't recall.</p> <p>9 Q. Okay.</p> <p>10 Is it fair to say based upon the</p> <p>11 exhibit attached that the selling and marketing that</p> <p>12 you were discussing with Mr. Charm are reflected in</p> <p>13 the exhibit that you attached to your email entitled</p> <p>14 selling and marketing and margin?</p> <p>15 MR. KATZ: Objection.</p> <p>16 A. I'm not sure exactly what I talked</p> <p>17 about with Mr. Charm exactly.</p> <p>18 Q. Okay.</p> <p>19 MR. RICH: Mark this, please, as</p> <p>20 the next exhibit.</p> <p>21 (Exhibit DeVoe-21, Stock Purchase</p> <p>22 Agreement dated 8-13-99, Bates NAM04566-4623,</p>

30 (Pages 114 to 117)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

Page 118	Page 120
<p>1 and 37-page attachment entitled CCMI 2 Disclosure Memorandum to Stock Purchase 3 Agreement as of August 13, 1999, received 4 and marked for identification.) 5 Q. Mr. DeVoe, I show you what's been 6 marked as DeVoe Exhibit 21. Do you recognize this? 7 A. Yes. 8 Q. Okay. 9 And what is it? 10 A. It's the stock purchase agreement 11 between CCMI and News America Marketing. 12 Q. And if you look at NAM04623, is that 13 your signature? 14 A. Yes. 15 Q. And you were signing on behalf of 16 News America Marketing In-Store, Inc.? 17 A. Yes. 18 Q. Now, paragraph 6.8 which is on 19 NAM04604 -- 20 Do you see that? 21 A. Yes, I'm there. 22 Q. And when we were speaking earlier</p>	<p>1 sales force to mean? 2 A. It's a generic term for our selling 3 organization. 4 Q. Okay. 5 And was it News America's intention 6 at the time it signed this agreement to provide 7 support for CCMI by utilizing the sales force to 8 promote the sale of the company's products? 9 A. Yes. The current intention at that 10 time was to promote the sale of the company's 11 products being CCMI's. 12 Q. When did the intention change? 13 MR. KATZ: Objection. 14 A. I'm not aware it changed. 15 Q. So it's your understanding that it 16 was and remains News America's intention to provide 17 support for the business for utilizing New America's 18 sales force in order to promote the sale of the 19 company? 20 A. Up until I left the company. I can't 21 speak to after that. 22 Q. And that's a fair limitation.</p>
Page 119	Page 121
<p>1 about your discussions with Mr. Charm and others on 2 a conference call, is this the provision to which 3 you were referring? 4 A. (Examining document.) 5 Yes. 6 Q. Now, the first sentence of 6.8 7 states, "It is Buyer's current intention to provide 8 support to the business of the company by, among 9 other things, (i) utilizing Buyer's sales force in 10 order to promote the sale of the company's 11 products." 12 Do you see that? 13 A. Yes. 14 Q. What was your understanding of this 15 provision? 16 A. Of 6.8 (i)? 17 Q. Yes. 18 A. That provision was an attempt to have 19 our larger sales force be able to communicate the 20 product offerings of CCMI to our manufacturing 21 lines. 22 Q. And what did you understand the term</p>	<p>1 What to your knowledge did 2 News America do to promote the sale of CCMI's 3 products through its sales force? 4 A. I don't remember. 5 Q. Is there anyone who would know that 6 from News America? 7 A. I'm not positive. The individuals 8 would be Jon Rubin, Henry Lellouche, and Chris 9 Mixson. 10 Q. How many salespeople in 1999 were in 11 New America's manufacturing sales force? 12 A. I'm not sure. I'd approximate 50 to 13 100. Maybe there's more. I'm maybe being 14 conservative. I just can't recall. 15 Q. Okay. 16 And were there other parts of 17 News America's sales organization in addition to the 18 manufacturing sales force? 19 A. I'm sorry. Were there different 20 selling groups within News America Marketing? 21 Q. Yes. 22 A. Yes.</p>

31 (Pages 118 to 121)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

Page 122	Page 124
<p>1 Q. And what were those groups?</p> <p>2 A. I believe there's a sales force that</p> <p>3 sold to direct response clients.</p> <p>4 Q. And how many people were in that</p> <p>5 sales force?</p> <p>6 A. I'm not sure.</p> <p>7 Q. Less than 100?</p> <p>8 A. Yes.</p> <p>9 Q. Less than 50?</p> <p>10 A. Yes.</p> <p>11 Q. Less than 10?</p> <p>12 A. I'm not sure.</p> <p>13 Q. Okay.</p> <p>14 Any other components of</p> <p>15 News America's sales force?</p> <p>16 A. At the time we entered into the</p> <p>17 agreement?</p> <p>18 Q. Yes.</p> <p>19 A. I'm not sure.</p> <p>20 Q. Now, do you recollect having any</p> <p>21 discussions with Ms. Raider or Mr. Fireman or</p> <p>22 Mr. Charm about CCMI having immediate access to</p>	<p>1 reorganized before the acquisition?</p> <p>2 A. I don't remember.</p> <p>3 Q. Okay.</p> <p>4 Do you remember that there was a</p> <p>5 reorganization somewhere around the time of the</p> <p>6 stock purchase?</p> <p>7 A. I'm sorry I don't.</p> <p>8 Q. You don't remember one way or</p> <p>9 another?</p> <p>10 A. I don't.</p> <p>11 Q. And I apologize for asking the</p> <p>12 questions that way.</p> <p>13 A. That's okay.</p> <p>14 Q. I'm just trying to determine whether</p> <p>15 you don't know or whether the answer is no.</p> <p>16 A. Okay.</p> <p>17 Q. And I take it, then, you don't have</p> <p>18 any recollection one way or the other of talking to</p> <p>19 Mr. Fireman or Ms. Raider about a sales</p> <p>20 reorganization?</p> <p>21 A. No, I don't have that recollection.</p> <p>22 Q. The agreement talks about promoting</p>
Page 123	Page 125
<p>1 NAM's sales staff to market CCMI products?</p> <p>2 A. I recollect discussion of needing to</p> <p>3 work with the sales force and try to update them on</p> <p>4 the products and give them information or training.</p> <p>5 Q. Did you talk with Ms. Raider or</p> <p>6 Mr. Fireman or both?</p> <p>7 A. I don't recall.</p> <p>8 Q. And there was agreement reached on</p> <p>9 both sides that that was something that needed to be</p> <p>10 done?</p> <p>11 MR. KATZ: Objection.</p> <p>12 A. I'd say there was an acknowledgement</p> <p>13 that in order for our sales force to be helpful at</p> <p>14 all, they would need to have a better understanding</p> <p>15 of the product.</p> <p>16 Q. Was there any discussion about the</p> <p>17 manner in which that would happen?</p> <p>18 A. No.</p> <p>19 Q. Not that you recall or no, there were</p> <p>20 not?</p> <p>21 A. I don't recall.</p> <p>22 Q. Now, was NAM's sales force being</p>	<p>1 the sale of CCMI's products.</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. What products did you contemplate</p> <p>5 were being referred to by this provision?</p> <p>6 A. I don't remember.</p> <p>7 Q. Okay.</p> <p>8 Now we'll talk about (ii). It says</p> <p>9 News America would assist the company in the</p> <p>10 creation of long-term relationships with retailers.</p> <p>11 What understanding, if any, did you have as to what</p> <p>12 this provision was designed to do?</p> <p>13 A. It was a discussion that, if I</p> <p>14 recall, CCMI saw some potential opportunity in the</p> <p>15 future to get involved in helping the retailer</p> <p>16 manage some of its frequent shopper data, some of</p> <p>17 its data from its loyalty cards, and in order to</p> <p>18 have access to that data, if I remember in a lot of</p> <p>19 cases when CCMI ran a marketing program, they'd go</p> <p>20 in and ask for specific authorization to go to the</p> <p>21 retailer's data for a specific program.</p> <p>22 Here we were looking at potential</p>

32 (Pages 122 to 125)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 126</p> <p>1 could we enter into longer-term relationships so we 2 had more consistent access to data with the retailer 3 than if we were able to gain that access and were 4 able to put it into some type of software program or 5 analytic tool that we could then utilize that 6 information hopefully then to go out and sell 7 different programs. 8 Q. And did you have any particular 9 retailers in mind? 10 A. No. 11 Q. Examples of types of retailers that 12 were contemplated by this provision? 13 A. I don't know if there were any 14 specific retailers contemplated by the provision. 15 Q. What about types of retailers? 16 A. I don't know the span of it. It 17 would have included grocery retailers. 18 Q. I take it this is something that was 19 discussed with Ms. Raider and Mr. Fireman prior to 20 signing this agreement? 21 MR. KATZ: Objection. 22 A. As I guess I talked about before, we</p>	<p style="text-align: right;">Page 128</p> <p>1 English, that would be a good start. 2 In Exhibit 13, the last bullet point 3 under opportunities for News America Marketing and 4 CCMI there is a reference to leveraging CCMI's 5 database management and marketing programs. 6 Do you see that? 7 A. Yes. 8 Q. Was any aspect of that opportunity 9 reflective of 6.8 (ii)? 10 A. It certainly wouldn't have been kind 11 of a priority. Whether it was any aspect or not, I 12 don't know. It was primarily focused on the grocery 13 channel with our core consumer packaged good 14 manufacturing clients. 15 Q. Did you contemplate that 6.8 (ii) 16 would be designed in part to expose CCMI to 17 News Corp.'s affiliates' retailers? 18 A. What do you mean by News Corp.'s 19 affiliates' retailers? 20 Q. Like Fox Television, for example. 21 A. What retailers? 22 Q. Any of their retailers.</p>
<p style="text-align: right;">Page 127</p> <p>1 discussed the items that we have in the agreement. 2 Q. Okay. 3 Do you have any memory in addition to 4 what you've already testified about discussions 5 relative to 6.8 (ii)? 6 A. No, I don't recall any discussions. 7 Q. Okay. 8 And did this provision, did 6.8 (ii) 9 have anything to do with the reference in DeVoe 10 Exhibit 13 about leveraging CCMI's database 11 management and marketing programs to enhance 12 affinity programs -- Fox Sports, Fox Family, 13 HarperCollins and so forth -- and or is that a 14 different reference altogether? And just for your 15 edification, I'm on page 2 of Exhibit 13, your memo, 16 the last bullet point. 17 MR. KATZ: Dave, maybe you should 18 rephrase the question. 19 MR. RICH: Maybe I will. That's a 20 fair point. 21 Q. The reference in 6.8 (ii), was any of 22 the -- strike that. If I asked the question in</p>	<p style="text-align: right;">Page 129</p> <p>1 MR. KATZ: Objection. 2 A. I don't understand where retailer 3 fits in with Fox Television. 4 Q. Maybe I used a bad example. Let's 5 try this one more time. 6 Do you have Exhibit 13 in front of 7 you? 8 A. Yes. 9 Q. I'm sorry for flipping around. I 10 know it's confusing. 11 A. I have it. 12 Q. Page 2, paragraph 2 under 13 opportunities, the second bullet point, not the last 14 bullet point but the second bullet point which 15 references News America's strong relationships with 16 supermarket retailers and consumer packaged goods 17 manufacturers offering significant expansion 18 opportunities. 19 Do you see that? 20 A. Yes. 21 Q. Is the opportunity reflected in 22 Exhibit 13 the same assistance which is reflected in</p>

33 (Pages 126 to 129)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 130</p> <p>1 6.8 (ii)?</p> <p>2 A. I don't know if it's speaking to a</p> <p>3 level of assistance, but generally yes, I think</p> <p>4 that's the market, that's generally the market. It</p> <p>5 was referring generally to the market, yes.</p> <p>6 Q. I apologize. I misread my notes and</p> <p>7 went down a road which was unnecessary. So my</p> <p>8 apologies.</p> <p>9 Let's talk about 6.8 (iii), which</p> <p>10 talks about the buyer's current intention to provide</p> <p>11 support by investing in software and hardware as</p> <p>12 needed to expand the company's business.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. What was your understanding of this</p> <p>16 provision?</p> <p>17 A. That we would invest in the software</p> <p>18 and the hardware as needed to expand the company's</p> <p>19 business as we would evaluate any of our businesses.</p> <p>20 Q. Was there particular software or</p> <p>21 hardware that was discussed prior to August 13th,</p> <p>22 1999?</p>	<p style="text-align: right;">Page 132</p> <p>1 And your email talks about capital</p> <p>2 spending as managed centrally and the funds are</p> <p>3 distributed when approved. Right?</p> <p>4 A. Yes.</p> <p>5 Q. And is that consistent with the</p> <p>6 protocol for News America more broadly?</p> <p>7 A. For News America Marketing, yes.</p> <p>8 Q. And so it was contemplated by 6.83</p> <p>9 and your discussions that CCMI would seek approval</p> <p>10 for the disbursement of funds, and if approved, the</p> <p>11 funds would be disbursed?</p> <p>12 MR. KATZ: Objection.</p> <p>13 A. And if they were not, they would not</p> <p>14 be.</p> <p>15 Q. 6.8 (iii), was that something that</p> <p>16 CCMI's side requested be included in the agreement?</p> <p>17 A. May I refer back to the other</p> <p>18 exhibits?</p> <p>19 Q. You can refer back to whatever you'd</p> <p>20 like.</p> <p>21 MR. KATZ: Can we have the question</p> <p>22 back again?</p>
<p style="text-align: right;">Page 131</p> <p>1 A. I don't recall.</p> <p>2 Q. Okay.</p> <p>3 Was there specific funding amounts</p> <p>4 discussed prior to August 13th, 1999</p> <p>5 A. Yes.</p> <p>6 Q. What was discussed?</p> <p>7 A. I believe what was requested by CCMI</p> <p>8 was for us to agree on 1 and a half million dollars</p> <p>9 of funding.</p> <p>10 I believe I testified earlier that I</p> <p>11 don't recollect whether we agreed to do that or we</p> <p>12 didn't agree to do that.</p> <p>13 I know my point at one point was that</p> <p>14 we'll invest the capital as needed consistent with</p> <p>15 our other policies and if we think we need to put it</p> <p>16 in.</p> <p>17 Q. If you go back to Exhibit 19, your</p> <p>18 email, it talks about the 1.5 million will not be</p> <p>19 infused into the business at closing. Is that the</p> <p>20 same 1.5 million?</p> <p>21 A. It's the same I'm recollecting, yes.</p> <p>22 Q. Okay.</p>	<p style="text-align: right;">Page 133</p> <p>1 MR. RICH: I'll strike the question.</p> <p>2 MR. KATZ: Can we take a short break?</p> <p>3 MR. RICH: Sure.</p> <p>4 (Break taken from 1:40 p.m. to</p> <p>5 1:47 p.m.)</p> <p>6 Q. Was 6.8 (ii) and 6.8 (iii) included</p> <p>7 in this agreement at the request of CCMI?</p> <p>8 MR. KATZ: Objection.</p> <p>9 A. I believe CCMI requested the</p> <p>10 information to be in the agreement and we agreed as</p> <p>11 of the close of the contract that it was our current</p> <p>12 intention to do (i), (ii), and (iii) at the time of</p> <p>13 the agreement.</p> <p>14 Q. Do you know whether News America</p> <p>15 Marketing assisted CCMI in the creation of long-term</p> <p>16 relationships with retailers?</p> <p>17 A. I don't know.</p> <p>18 Q. The next sentence states,</p> <p>19 "Notwithstanding the foregoing, the buyer shall be</p> <p>20 free to operate the company and its affiliates in</p> <p>21 its sole and unfettered judgment and sellers shall</p> <p>22 have no claim against buyers in connection therewith</p>

34 (Pages 130 to 133)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 134</p> <p>1 as a result of the preceding sentence." 2 Right? 3 A. Yes. 4 Q. What is the reference to affiliates 5 in this sentence? 6 A. I'm not sure. I have to see how it's 7 defined in the agreement. 8 Q. Okay. Well, why don't you do that. 9 A. (Examining document.) 10 Q. It's on page 6412. 11 A. (Examining document.) 12 MR. KATZ: Is there a question? 13 MR. RICH: I'm asking what his 14 understanding of the term affiliate meant 15 in the context of 6.8. 16 A. Just as it's in the agreement. 17 Q. Okay. 18 Any further elaboration on that? 19 A. No. 20 Q. You have no other understanding 21 beyond what's written in the agreement? 22 A. That's correct.</p>	<p style="text-align: right;">Page 136</p> <p>1 News America Marketing could have laid off every 2 employee of CCMI the day the agreement, the day 3 after the agreement was signed? 4 A. With the exception of Ann and Bob. 5 Q. Well, those rights would have derived 6 from the employment contract. Correct? 7 A. Yes. That's what I'm referring to. 8 Q. Okay. 9 So simply within the four corners of 10 the stock purchase agreement News America was within 11 its right, according to your understanding of 6.8, 12 to lay off and reassign every employee of CCMI? 13 A. The way I understand it, the buyer 14 shall be free to operate the company and its 15 affiliates in its sole and unfettered judgment. 16 Q. And how about Ms. Raider and 17 Mr. Fireman? Could they have been reassigned to 18 work in another area of New America Marketing? 19 A. I'm not sure. I'd have to look at 20 the employment contracts. 21 Q. Okay. 22 Well, ignoring the existence of the</p>
<p style="text-align: right;">Page 135</p> <p>1 Q. Now, what did you understand this 2 sentence to mean? 3 A. Which sentence? 4 Q. The sentence that begins 5 "Notwithstanding the foregoing," 6.8, page 36. 6 A. It essentially meant that 7 News America Marketing could operate the company as 8 it saw fit. It could basically make decisions and 9 operate the company as it determined was in the best 10 interests of the business. 11 Q. Based on your understanding, could 12 News America Marketing have simply abandoned CCMI's 13 business according to this provision? 14 MR. KATZ: Objection. You're asking 15 for his understanding? 16 MR. RICH: Right, as the person who 17 signed the agreement on behalf of News America 18 Marketing. 19 A. The way I interpret the agreement is 20 yes. 21 Q. Okay. 22 And based on your understanding,</p>	<p style="text-align: right;">Page 137</p> <p>1 employment contract and focusing solely on the stock 2 agreement, was that something you understood 3 News America Marketing had the right to do based 4 upon 6.8? 5 MR. KATZ: Objection. Do you 6 understand the question? 7 A. It seems like the question is similar 8 to the last question. I think I answered that, that 9 the buyer again shall be free to operate the company 10 and its affiliates in its sole and unfettered 11 judgment, so it essentially could do as it saw fit 12 with the business. 13 Q. Okay. 14 Was News America Marketing obligated 15 under 6.8, based on your understanding, to act in 16 good faith relative to CCMI? 17 MR. KATZ: Objection. 18 A. I'd have to get consultation of one 19 of our lawyers. I don't see the words good faith in 20 there. So I'd have to ask them to help me interpret 21 the question. 22 MR. KATZ: You've answered the</p>

35 (Pages 134 to 137)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

Page 138	Page 140
<p>1 question.</p> <p>2 Q. So you had no understanding when you</p> <p>3 signed Exhibit 20 as to whether News America</p> <p>4 Marketing was obligated to act in good faith</p> <p>5 relative to the provisions of 6.8?</p> <p>6 MR. KATZ: Objection. I think</p> <p>7 he's answered. He said that he'd need</p> <p>8 to get legal counsel on that question.</p> <p>9 MR. RICH: Well, I'm asking</p> <p>10 something different. I'm asking about his</p> <p>11 understanding, if he had one, at the time he</p> <p>12 signed this agreement, not now.</p> <p>13 A. At the time I signed the agreement</p> <p>14 especially as it relates to 6.8 I think I had been</p> <p>15 pretty clear that it was our current intention to do</p> <p>16 the items listed in (i), (ii), and (iii), and that</p> <p>17 despite all that, that we had complete flexibility</p> <p>18 to run and operate the business as we determined was</p> <p>19 necessary.</p> <p>20 Q. Can you try and answer my question?</p> <p>21 A. Define good faith.</p> <p>22 Q. Well, what is your understanding of</p>	<p>1 Q. Mr. DeVoe, do you have an</p> <p>2 understanding of what good faith means?</p> <p>3 A. I ask you to explain it to me.</p> <p>4 Q. I'm asking for your personal</p> <p>5 definition of good faith. Do you have one? I'm not</p> <p>6 asking for a legal definition. I'm asking for your</p> <p>7 personal definition.</p> <p>8 A. I need to take a break.</p> <p>9 Q. Well, I can't let you take a break</p> <p>10 while a question is pending. As soon as you answer</p> <p>11 the question, you can take a break.</p> <p>12 MR. KATZ: Just so that I'm clear,</p> <p>13 are you asking him for a legal definition of</p> <p>14 good faith?</p> <p>15 MR. RICH: I'm asking for his</p> <p>16 personal definition of the word good faith as</p> <p>17 he understands it.</p> <p>18 MR. KATZ: Are you asking him first</p> <p>19 does he have a definition of good faith that</p> <p>20 he thinks of? He may not have one.</p> <p>21 MR. RICH: He can answer that. If</p> <p>22 he doesn't have a personal definition of good</p>
Page 139	Page 141
<p>1 good faith?</p> <p>2 MR. KATZ: You're really trying to</p> <p>3 examine him on a legal subject and I'm going</p> <p>4 to object to that.</p> <p>5 I think he's already answered the</p> <p>6 question that he would need to get guidance</p> <p>7 from counsel and so I think it's time to move</p> <p>8 on to a different subject.</p> <p>9 MR. RICH: I disagree he's answered</p> <p>10 the question. I disagree that I don't have</p> <p>11 the right to ask him as to what his</p> <p>12 understanding was of the agreement at the time</p> <p>13 he signed the agreement.</p> <p>14 MR. KATZ: Well, why don't you first</p> <p>15 ask him if he has an understanding of what</p> <p>16 good faith means in a legal context, and then</p> <p>17 if he did, maybe you could ask him more.</p> <p>18 But you're asking him legal</p> <p>19 questions. You might as well ask him what the</p> <p>20 definition of promissory estoppel is because</p> <p>21 it's something that's outside of his domain</p> <p>22 and he's already told you that.</p>	<p>1 faith, he can answer it that way.</p> <p>2 A. My view as it relates to good faith</p> <p>3 in this agreement is that News America Marketing</p> <p>4 would operate under the terms agreed to in the</p> <p>5 document. That's what I would understand, at least</p> <p>6 what I'm talking about as good faith.</p> <p>7 Q. Okay.</p> <p>8 Why don't you start by answering my</p> <p>9 question, which is do you believe that News America</p> <p>10 Marketing had an obligation to act in good faith</p> <p>11 relative to paragraph 6.8 as you define the word</p> <p>12 good faith to mean as a layperson and the person who</p> <p>13 signed this document?</p> <p>14 MR. KATZ: Objection.</p> <p>15 A. I thought I answered the question.</p> <p>16 MR. KATZ: I believe you did answer</p> <p>17 the question.</p> <p>18 Q. Can you answer it for me again?</p> <p>19 A. Yes. That News America Marketing</p> <p>20 would live up to the terms in the agreement.</p> <p>21 Q. And what terms would it live up to?</p> <p>22 A. The terms as outlined in the document</p>

36 (Pages 138 to 141)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 142</p> <p>1 dated August 13th, 1999.</p> <p>2 MR. KATZ: We'll take a break.</p> <p>3 MR. RICH: Okay.</p> <p>4 (Break taken from 1:57 p.m. to</p> <p>5 2:02 p.m.)</p> <p>6 Q. We discussed this very briefly</p> <p>7 earlier. The earn-out time period was five years.</p> <p>8 Correct?</p> <p>9 A. Is there something in a document?</p> <p>10 Q. Yes. I will direct you precisely. I</p> <p>11 think it's section 2.3.</p> <p>12 A. (Examining document.)</p> <p>13 Yes.</p> <p>14 Q. Do you know how it was that the</p> <p>15 earn-out period was determined to be five years as</p> <p>16 opposed to some other benchmark?</p> <p>17 A. It was negotiated.</p> <p>18 Q. Isn't it the case that the five-year</p> <p>19 time period was selected because Fireman and</p> <p>20 Raider's business plan projected out five years?</p> <p>21 A. I don't believe so.</p> <p>22 Q. Do you have any memory of why the</p>	<p style="text-align: right;">Page 144</p> <p>1 Fireman and Raider maximize the potential to meet</p> <p>2 the earn-out?</p> <p>3 A. Yes.</p> <p>4 Q. Do you remember having a discussion</p> <p>5 with either Ms. Raider or Mr. Fireman concerning</p> <p>6 6.8, telling them it was boiler plate?</p> <p>7 A. No.</p> <p>8 Q. Do you remember having any</p> <p>9 discussions specifically with them about 6.8?</p> <p>10 A. Only the one I referenced earlier</p> <p>11 when we had the conference call which I believe Les</p> <p>12 was on as well.</p> <p>13 Q. Okay.</p> <p>14 And you don't have any recollection</p> <p>15 of any other communications with them concerning</p> <p>16 6.8?</p> <p>17 A. No.</p> <p>18 Q. Now, are there any communications</p> <p>19 that you had with any representative of CCMI</p> <p>20 concerning the negotiation or execution of</p> <p>21 Exhibit 20 that you haven't told me about today or</p> <p>22 have you exhausted your memory?</p>
<p style="text-align: right;">Page 143</p> <p>1 five years was utilized?</p> <p>2 A. No.</p> <p>3 Q. Was it your understanding as the</p> <p>4 individual who signed Exhibit 20 that NAM had an</p> <p>5 obligation to assist Fireman and Raider to maximize</p> <p>6 their potential to earn the earn-out?</p> <p>7 A. Can you rephrase?</p> <p>8 Q. Yes.</p> <p>9 Is it your understanding as the</p> <p>10 individual who negotiated and signed Exhibit 20</p> <p>11 that News America Marketing had an obligation to</p> <p>12 assist Fireman and Raider to maximize their</p> <p>13 potential to earn the earn-out?</p> <p>14 MR. KATZ: Objection.</p> <p>15 A. No. Because we previously testified</p> <p>16 that it was our sole, again going back to the other</p> <p>17 paragraph, if in our sole and unfettered judgment we</p> <p>18 decided to make changes to the business, modify the</p> <p>19 business or shut the business down, we had the right</p> <p>20 to do that.</p> <p>21 Q. So News America Marketing based on</p> <p>22 your understanding was under no obligation to help</p>	<p style="text-align: right;">Page 145</p> <p>1 MR. KATZ: Can we have the question</p> <p>2 back?</p> <p>3 MR. RICH: Sure. Let me rephrase it.</p> <p>4 Q. You've testified for the past several</p> <p>5 hours about your interactions with representatives</p> <p>6 of CCMI. Correct?</p> <p>7 A. Yes.</p> <p>8 Q. And you've discussed communications</p> <p>9 which led up to the execution of Exhibit 21.</p> <p>10 Correct?</p> <p>11 A. Yes.</p> <p>12 Q. Have you exhausted your memory and</p> <p>13 told me about every communication that you recall</p> <p>14 sitting here today that you had with any</p> <p>15 representative of CCMI that you haven't previously</p> <p>16 told me about?</p> <p>17 A. During what time frame?</p> <p>18 Q. Pre August 13th, 1999.</p> <p>19 A. I would need you to go back through</p> <p>20 and remind me of the ones I've mentioned, if you can</p> <p>21 mention them to me.</p> <p>22 Q. Well, beyond what you've already</p>

37 (Pages 142 to 145)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 146</p> <p>1 testified to, does any experience or interaction or</p> <p>2 communication with any representative of CCMI stand</p> <p>3 out in your mind as being particularly memorable</p> <p>4 that you haven't told me about today?</p> <p>5 A. I'm not sure. I remember the initial</p> <p>6 meeting in Boston. I recall again generally the</p> <p>7 negotiations and I recall generally two main</p> <p>8 concepts of negotiation, one being what ended up</p> <p>9 being 6.8 and the other one being a dialogue on the</p> <p>10 earn-out as well as -- those were the two main</p> <p>11 points I remember. I was going to say as well as</p> <p>12 the other items but they're already included in 6.8.</p> <p>13 I'm not sure if I mentioned any other</p> <p>14 ones. Those were the ones leading up to the</p> <p>15 agreement were the main points.</p> <p>16 We initially met and there was</p> <p>17 dialogue about a deal and there was negotiation for</p> <p>18 a deal and there were some particulars as it relates</p> <p>19 to the deal that we were negotiating. At least</p> <p>20 that's what I can recall.</p> <p>21 Q. Okay. Thank you.</p> <p>22 Now, after August 13th, 1999, what</p>	<p style="text-align: right;">Page 148</p> <p>1 A. I believe he reported to me.</p> <p>2 Q. And who did Mr. Fireman and</p> <p>3 Ms. Raider report directly to? And I'm focused on</p> <p>4 this initial time period as you defined it.</p> <p>5 A. I think right after the agreement</p> <p>6 they reported to me.</p> <p>7 Q. Now, Mr. Fireman was the general</p> <p>8 manager of CCMI?</p> <p>9 A. I believe so.</p> <p>10 Q. And do you know what his duties and</p> <p>11 responsibilities were?</p> <p>12 A. I don't recall.</p> <p>13 Q. Okay.</p> <p>14 Do you know whether his duties and</p> <p>15 responsibilities, whatever they were, changed at</p> <p>16 some point in time?</p> <p>17 A. I don't recall how his duties may</p> <p>18 have changed when we formed this, I think it was the</p> <p>19 SmartSource iGroup and Chris Mixson was announced to</p> <p>20 run that business. Up until that time I believe he</p> <p>21 was just continuing to work on building the CCMI</p> <p>22 business. I'm not aware of any change in his</p>
<p style="text-align: right;">Page 147</p> <p>1 was your supervisory role relative to CCMI?</p> <p>2 A. I think for a period of time -- and</p> <p>3 I'm not sure how long it was -- I was involved as a,</p> <p>4 as I was with both PlanetU and SoftCard, I was</p> <p>5 responsible for working with those businesses and</p> <p>6 trying to work with different individuals within our</p> <p>7 company to bring them into our broader News America</p> <p>8 Marketing business.</p> <p>9 Q. Were you the direct report for CCMI,</p> <p>10 PlanetU, and SoftCard for that period of time?</p> <p>11 A. SoftCard and PlanetU were both</p> <p>12 investments. CCMI, I believe I was responsible for</p> <p>13 working with Ann and Bob as we tried to move the</p> <p>14 business forward. I believe I asked Jon Rubin to</p> <p>15 help me in that regard.</p> <p>16 Q. What position did Jon Rubin have?</p> <p>17 A. He was a senior vice-president.</p> <p>18 Q. And was he brought in on the</p> <p>19 hierarchical chart between yourself and Ms. Raider</p> <p>20 and Mr. Fireman?</p> <p>21 A. I don't recall.</p> <p>22 Q. Who did Mr. Rubin report to directly?</p>	<p style="text-align: right;">Page 149</p> <p>1 responsibilities.</p> <p>2 Q. At some point was Mr. Lellouche</p> <p>3 brought in to be the general manager of CCMI?</p> <p>4 A. I don't know what his title was. At</p> <p>5 some point I think he was involved. I don't</p> <p>6 remember the exact time frame.</p> <p>7 Q. Do you remember that he assumed all</p> <p>8 of Mr. Fireman's responsibilities?</p> <p>9 A. No. I don't recall.</p> <p>10 Q. You don't recall one way or another?</p> <p>11 A. I don't.</p> <p>12 Q. Do you know what Mr. Lellouche's</p> <p>13 responsibilities were relative to CCMI when he first</p> <p>14 got involved in CCMI?</p> <p>15 A. I don't specifically recall.</p> <p>16 Q. Do you recall hearing complaints from</p> <p>17 Mr. Fireman and Ms. Raider about Mr. Lellouche's job</p> <p>18 responsibilities for CCMI?</p> <p>19 MR. KATZ: Objection.</p> <p>20 A. I don't recall Henry's job</p> <p>21 responsibilities and I just don't recall the</p> <p>22 complaints.</p>

38 (Pages 146 to 149)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 150</p> <p>1 Q. Were there complaints?</p> <p>2 MR. KATZ: Objection.</p> <p>3 A. There may have been but I just don't</p> <p>4 recall them.</p> <p>5 Q. You mentioned SmartSource iGroup. Do</p> <p>6 you know when the plan for SmartSource iGroup was</p> <p>7 developed relative to the stock purchase?</p> <p>8 A. I don't remember.</p> <p>9 Q. Do you remember whether it was before</p> <p>10 or after?</p> <p>11 A. I don't remember whether it was</p> <p>12 before or after.</p> <p>13 Q. Do you know why it was that the</p> <p>14 SmartSource iGroup was formed?</p> <p>15 A. I don't specifically recall. I know</p> <p>16 it was formed and the investments in PlanetU and</p> <p>17 SoftCard as well as the operation in CCMI were all</p> <p>18 put underneath that umbrella group.</p> <p>19 Q. And do you know why this was done?</p> <p>20 A. I don't recall.</p> <p>21 Q. Were any studies or surveys done</p> <p>22 about forming this group?</p>	<p style="text-align: right;">Page 152</p> <p>1 why they weren't consulted with, assuming they</p> <p>2 weren't?</p> <p>3 MR. KATZ: Objection. Don't</p> <p>4 speculate. Either you know or you don't</p> <p>5 know.</p> <p>6 A. I don't know.</p> <p>7 Q. Now, you mentioned for a period of</p> <p>8 time Fireman and Raider were reporting to you and</p> <p>9 that has changed. Correct?</p> <p>10 A. Yes.</p> <p>11 Q. And they began reporting to</p> <p>12 Mr. Lellouche or Mr. Rubin?</p> <p>13 A. I'm not sure of the exact reporting</p> <p>14 structure and when it changed. I'm focusing more on</p> <p>15 the -- I recall when they definitely reported to</p> <p>16 Chris Mixson. I'll say this. I remember when Chris</p> <p>17 assumed responsibility for the business. Whether</p> <p>18 they were reporting to someone else before that or</p> <p>19 not, I just don't recall.</p> <p>20 Q. But we can agree that they went from</p> <p>21 reporting directly to you to not reporting directly</p> <p>22 to you?</p>
<p style="text-align: right;">Page 151</p> <p>1 A. I don't recall.</p> <p>2 Q. Now, prior to August 13th, 1999, do</p> <p>3 you remember having any discussions with</p> <p>4 Mr. Fireman, Ms. Raider, Mr. Charm concerning</p> <p>5 changing CCMI's name?</p> <p>6 A. I don't recall a specific discussion.</p> <p>7 Q. Do you know who made the decision to</p> <p>8 change CCMI's name?</p> <p>9 A. I don't know that there is a</p> <p>10 particular individual who made that decision.</p> <p>11 Generally that decision would have been made with</p> <p>12 the input of various people including the,</p> <p>13 ultimately you'd include the chairman of the</p> <p>14 business as well in that discussion.</p> <p>15 Q. Do you know whether Mr. Fireman and</p> <p>16 Ms. Raider were consulted with regard to the name</p> <p>17 change?</p> <p>18 A. I don't know.</p> <p>19 Q. Would it surprise you to know that</p> <p>20 they weren't?</p> <p>21 A. I don't have a reaction.</p> <p>22 Q. Okay. Can you think of any reason</p>	<p style="text-align: right;">Page 153</p> <p>1 A. Yes.</p> <p>2 Q. And are you able to identify a year</p> <p>3 when that happened?</p> <p>4 A. No.</p> <p>5 Q. Okay.</p> <p>6 Were you involved in any meetings or</p> <p>7 discussions about the fact that Ms. Raider and</p> <p>8 Mr. Fireman would no longer be reporting to you</p> <p>9 directly?</p> <p>10 A. I don't recall a meeting.</p> <p>11 Q. Okay.</p> <p>12 How about general discussions?</p> <p>13 A. I don't recall the discussions.</p> <p>14 Q. Okay.</p> <p>15 I take it these things, you don't</p> <p>16 just wake up one morning and things have changed at</p> <p>17 News America. Correct?</p> <p>18 MR. KATZ: Objection.</p> <p>19 A. That's correct. I don't want to</p> <p>20 speculate for you.</p> <p>21 Q. I'm not asking you to speculate.</p> <p>22 Things tend to happen by consensus at News America,</p>

39 (Pages 150 to 153)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

Page 154	Page 156
<p>1 is that your experience?</p> <p>2 MR. KATZ: Objection.</p> <p>3 A. An issue as it relates to the</p> <p>4 reporting structure if there was a change, it's</p> <p>5 conceivable that I would have had a discussion on</p> <p>6 that. I just do not recall.</p> <p>7 Q. Okay.</p> <p>8 And do you have a memory of</p> <p>9 Mr. Lellouche being promoted to senior</p> <p>10 vice-president at any point in time?</p> <p>11 A. I don't have that recollection.</p> <p>12 Q. Do you know whether Mr. Lellouche at</p> <p>13 any point in time was involved in the management of</p> <p>14 CCMI's business?</p> <p>15 A. Yes.</p> <p>16 Q. Okay.</p> <p>17 And do you know what his position</p> <p>18 was?</p> <p>19 A. I don't recall his position.</p> <p>20 Q. Do you know what his duties and</p> <p>21 responsibilities were?</p> <p>22 A. I don't recall his specific duties</p>	<p>1 A. The determination for SmartSource</p> <p>2 iGroup was made I believe at a senior level where</p> <p>3 Chris was put in operation of the business units.</p> <p>4 Q. Okay.</p> <p>5 Now, when Mr. Mixson was put in the</p> <p>6 position that he was put in that you've referred to,</p> <p>7 did you continue to have any involvement in the</p> <p>8 day-to-day operations of CCMI on a management level?</p> <p>9 A. No. I only would have been as</p> <p>10 supportive as necessary from a financial standpoint.</p> <p>11 Q. Well, how about after the stock</p> <p>12 purchase in August of 1999? Did you continue to</p> <p>13 have any role or responsibility on the management</p> <p>14 side of CCMI?</p> <p>15 MR. KATZ: Objection.</p> <p>16 A. I believe I had supervisory</p> <p>17 responsibility for a period of time.</p> <p>18 Q. I apologize for asking this already.</p> <p>19 You're not able to pin down whether it was a month,</p> <p>20 a week, six months, or a year?</p> <p>21 A. I'm not able to pin it down. A year</p> <p>22 seems long but I just don't recall.</p>
Page 155	Page 157
<p>1 and responsibilities.</p> <p>2 Q. What about general duties and</p> <p>3 responsibilities?</p> <p>4 A. Generally Henry was responsible</p> <p>5 working with Ann and Bob helping to build the CCMI</p> <p>6 business.</p> <p>7 Q. Do you know what experience</p> <p>8 Mr. Lellouche had, if any, in targeted marketing?</p> <p>9 A. No, I don't recall his experience.</p> <p>10 Q. How about loyalty programs? Do you</p> <p>11 know if he had any experience?</p> <p>12 A. I don't recall his experience in</p> <p>13 loyalty marketing.</p> <p>14 Q. How about store value?</p> <p>15 MR. KATZ: Objection.</p> <p>16 A. I don't recall his experience in</p> <p>17 store value.</p> <p>18 Q. Now, it was Mr. Lellouche who created</p> <p>19 the SmartSource iGroup and SmartSource Direct.</p> <p>20 Right? Or it was under his auspices. Let's say</p> <p>21 that.</p> <p>22 MR. KATZ: Objection.</p>	<p>1 Q. Okay. Six months is probably more of</p> <p>2 a --</p> <p>3 A. It's hard to guess.</p> <p>4 Q. Do you know whether Mr. Fireman was</p> <p>5 relieved of all of his operational responsibilities</p> <p>6 at any point in time?</p> <p>7 A. I don't recall.</p> <p>8 Q. How about Ms. Raider? Was she</p> <p>9 relieved of all of her retail sales responsibilities</p> <p>10 at any point in time to your knowledge?</p> <p>11 A. I don't recall.</p> <p>12 Q. Were you involved in any discussions</p> <p>13 relative to the scope of their duties and</p> <p>14 responsibilities?</p> <p>15 A. I would have been involved in the</p> <p>16 scope of responsibilities at the time of the</p> <p>17 agreement. Subsequent to that, I just don't recall.</p> <p>18 Q. Well, what was your involvement in</p> <p>19 the period that you were involved relative to Raider</p> <p>20 and Fireman's responsibilities?</p> <p>21 A. Initially it would have been as the</p> <p>22 duties are, however they're outlined in the</p>

40 (Pages 154 to 157)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 158</p> <p>1 employment agreement that they've signed.</p> <p>2 Q. Okay.</p> <p>3 Did you have any discussions with</p> <p>4 them about the scope of their duties or</p> <p>5 responsibilities?</p> <p>6 A. I don't recall.</p> <p>7 Q. After the first year of operations</p> <p>8 did CCMI have the ability to control its own</p> <p>9 budgets?</p> <p>10 A. No business unit has the ability to</p> <p>11 control its own budget. The budget is proposed and</p> <p>12 that budget is reviewed by senior staff, which would</p> <p>13 include myself and Mr. Carlucci, and eventually a</p> <p>14 budget is proposed and there's an operating plan</p> <p>15 that's agreed to for News America Marketing.</p> <p>16 But they wouldn't have had the right</p> <p>17 to say this is our budget and we're operating off</p> <p>18 this budget. If that's what you're asking, they</p> <p>19 wouldn't have had that right.</p> <p>20 Q. Do you know whether they proposed</p> <p>21 budgets?</p> <p>22 A. I don't recall a specific budget.</p>	<p style="text-align: right;">Page 160</p> <p>1 interview people and we were trying to hire sales</p> <p>2 executives, yes.</p> <p>3 Q. When did News America's hiring freeze</p> <p>4 go into effect?</p> <p>5 A. I'm not aware of a hiring freeze.</p> <p>6 Q. So you're unaware of any time when</p> <p>7 there was a hiring freeze in the late 1990/2000 time</p> <p>8 period for News America?</p> <p>9 A. I don't recall.</p> <p>10 Q. Okay.</p> <p>11 Do you have a recollection that</p> <p>12 shortly after August of 1999 News America was in the</p> <p>13 process of combining sales forces?</p> <p>14 A. Which sales forces?</p> <p>15 Q. Any sales forces.</p> <p>16 A. I don't have a recollection of the</p> <p>17 exact time frame. At one point in time we made a</p> <p>18 decision -- I don't know exactly when it was -- to</p> <p>19 combine the sales force with News America and what</p> <p>20 was formerly ACT Media. I don't recall the time.</p> <p>21 Q. Okay. And are you aware of Chris</p> <p>22 Mixson directing the sales force to focus its sales</p>
<p style="text-align: right;">Page 159</p> <p>1 Q. Do you know whether the budgets were</p> <p>2 provided, dictated to them? By them I mean CCMI.</p> <p>3 A. What do you mean by dictated?</p> <p>4 Q. Given to them saying, "This is your</p> <p>5 budget."</p> <p>6 A. I don't recollect exactly how that</p> <p>7 worked. A budget is a process where the different</p> <p>8 groups ask for their different needs, the department</p> <p>9 asks for their needs, and then they're provided a</p> <p>10 budget which they can operate off of and as well as</p> <p>11 sales calls. So I can't really comment on exactly</p> <p>12 how it was done.</p> <p>13 Q. For the period of time that you were</p> <p>14 Ms. Raider and Mr. Fireman's direct report, was CCMI</p> <p>15 receiving sales staff?</p> <p>16 MR. KATZ: Objection. What do you</p> <p>17 mean by receiving sales staff?</p> <p>18 Q. Did CCMI have the opportunity to hire</p> <p>19 sales staff?</p> <p>20 A. My recollection is there were</p> <p>21 attempts made at hiring sales staff. I don't know</p> <p>22 how many. But I recollect Ann needing to go and</p>	<p style="text-align: right;">Page 161</p> <p>1 on News America's sales goals rather than CCMI</p> <p>2 products?</p> <p>3 A. No. You'd have to speak with Chris.</p> <p>4 Q. You weren't in any meetings where you</p> <p>5 understood that that was asked?</p> <p>6 A. No.</p> <p>7 Q. Do you know what Mr. Mixson did to</p> <p>8 promote CCMI's product?</p> <p>9 A. I don't recall.</p> <p>10 Q. Do you know which sales staff was</p> <p>11 trained concerning CCMI's products?</p> <p>12 A. I recall there were attempts at</p> <p>13 training sessions and there may have been training</p> <p>14 sessions. I don't know how effective they were or</p> <p>15 how often they were held, but I believe there were</p> <p>16 attempts to do that.</p> <p>17 Q. What do you mean by there were</p> <p>18 attempts?</p> <p>19 A. I believe there may have been</p> <p>20 training sessions but I don't recollect exactly when</p> <p>21 that may have happened.</p> <p>22 Q. Do you know when these would have</p>

41 (Pages 158 to 161)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 162</p> <p>1 taken place?</p> <p>2 A. No, I don't recall.</p> <p>3 Q. Or how many there were?</p> <p>4 A. I don't recall.</p> <p>5 Q. And you personally didn't participate</p> <p>6 in those if they took place?</p> <p>7 A. No, I would not have participated.</p> <p>8 Q. Is it consistent with your memory</p> <p>9 that CCMI was only permitted to hire one salesperson</p> <p>10 the first seven months after Exhibit 21 was</p> <p>11 executed?</p> <p>12 A. I don't recollect.</p> <p>13 Q. In the 1999/2000 time period do you</p> <p>14 have any understanding as to which sales force, if</p> <p>15 any, was selling CCMI's products?</p> <p>16 A. I don't recall.</p> <p>17 Q. The duties of CCMI's manufacturing</p> <p>18 sales force were being performed by the dot com</p> <p>19 sales force in the first year or so after the stock</p> <p>20 purchase agreement.</p> <p>21 Is that correct?</p> <p>22 A. I don't remember.</p>	<p style="text-align: right;">Page 164</p> <p>1 Q. And it looks to me like it says Bob</p> <p>2 in script at the bottom next to thank you.</p> <p>3 A. Okay. I can see that, yes.</p> <p>4 Q. And so seeing this, do you generally</p> <p>5 understand this to be a letter that Mr. Fireman sent</p> <p>6 to you in October of 1999?</p> <p>7 A. Yes.</p> <p>8 Q. And this was about eight weeks after,</p> <p>9 eight or nine weeks after the stock purchase</p> <p>10 agreement had been signed?</p> <p>11 A. Yes.</p> <p>12 Q. Now, did you get this letter? Did</p> <p>13 you receive this letter?</p> <p>14 A. I don't recall receiving the letter.</p> <p>15 Q. Okay.</p> <p>16 Skimming through the contents of the</p> <p>17 letter do you generally recall these issues being</p> <p>18 raised by CCMI in the fall or winter of 1999?</p> <p>19 A. I don't remember the specifics that</p> <p>20 are included in the letter.</p> <p>21 Q. Okay.</p> <p>22 Do you know what action, if any, you</p>
<p style="text-align: right;">Page 163</p> <p>1 Q. Was CCMI allowed to become a part of</p> <p>2 NAM's sales tracking database?</p> <p>3 A. I don't remember.</p> <p>4 Q. Who would know that, if anyone?</p> <p>5 A. I'm not sure if he would know it or</p> <p>6 not. Chris Mixson may know.</p> <p>7 MR. RICH: This will be the next</p> <p>8 exhibit.</p> <p>9 (Exhibit DeVoe-22, 1-page letter</p> <p>10 dated 10-22-99, Bates FR0315, received and</p> <p>11 marked for identification.)</p> <p>12 Q. Mr. DeVoe, I'm showing you a document</p> <p>13 entitled Deposition Exhibit 22 which is Bates</p> <p>14 stamped FR0315.</p> <p>15 Do you recognize this letter?</p> <p>16 A. I'm not sure who sent the letter. I</p> <p>17 could guess by the signature but I'm not sure who</p> <p>18 sent it.</p> <p>19 Q. Okay.</p> <p>20 So you understand this letter to have</p> <p>21 been sent by someone at CCMI?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 165</p> <p>1 took in response to this letter?</p> <p>2 A. I don't recall the action I took.</p> <p>3 Q. Okay.</p> <p>4 Did you have a practice in 1999</p> <p>5 relative to receiving letters outlining issues and</p> <p>6 concerns?</p> <p>7 MR. KATZ: Objection.</p> <p>8 A. Can you rephrase the question?</p> <p>9 Q. Sure.</p> <p>10 I take it in your capacity as</p> <p>11 executive vice-president and chief financial officer</p> <p>12 in 1999 at News America that business issues were</p> <p>13 brought to your attention from time to time?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And from time to time those business</p> <p>16 issues would be sent to you more formally like in</p> <p>17 the form of a letter.</p> <p>18 Correct?</p> <p>19 A. They could come in a letter.</p> <p>20 Q. Did you have a practice or procedure</p> <p>21 as to how you would deal with letters that would</p> <p>22 come to your attention or that were sent to you</p>

42 (Pages 162 to 165)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 166</p> <p>1 raising certain business issues?</p> <p>2 A. I didn't have a specific practice or</p> <p>3 procedure. Again I'd be assuming, but I assume if I</p> <p>4 received a letter such as this, I would have thought</p> <p>5 I would have responded to it.</p> <p>6 Q. Okay. But you have no independent</p> <p>7 memory sitting here today of responding?</p> <p>8 A. No.</p> <p>9 Q. Please look at the third physical</p> <p>10 paragraph of the letter, fifth line down, which</p> <p>11 begins "While we have discussed scheduling</p> <p>12 meetings."</p> <p>13 A. Yes.</p> <p>14 Q. I'll just read it for the record.</p> <p>15 "While we have discussed scheduling meetings with</p> <p>16 the NAM manufacturer sales management team, we are</p> <p>17 told they are too busy or committed to other NAM</p> <p>18 ventures."</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Do you remember taking any action in</p> <p>22 response to this particular statement?</p>	<p style="text-align: right;">Page 168</p> <p>1 the next exhibit.</p> <p>2 (Exhibit DeVoe-23, 1-page email</p> <p>3 dated 11-12-99, Bates FR0413, received</p> <p>4 and marked for identification.)</p> <p>5 Q. Mr. DeVoe, I show you what's been</p> <p>6 marked as Exhibit 23. Do you recognize it?</p> <p>7 A. I recognize it as an email I sent.</p> <p>8 Q. Do you know what the email concerns?</p> <p>9 A. (Examining document.)</p> <p>10 It appears to discuss staffing.</p> <p>11 Q. Under Bob, you note that Mr. Pappas</p> <p>12 is terminated. Reva Hill and Craig Joreess's</p> <p>13 positions have been moved to Connecticut. Michele</p> <p>14 Semar is terminated. Michael Hughes's position at</p> <p>15 CCMI terminated. And at the bottom you note, "We</p> <p>16 will not be able to facilitate any additional</p> <p>17 headcount increases at this time."</p> <p>18 Correct? Did I read that correctly?</p> <p>19 A. The parts that you've read you read</p> <p>20 correctly. I'm looking at an email that I</p> <p>21 apparently have done in very brief format that</p> <p>22 there's another email below it that I may be</p>
<p style="text-align: right;">Page 167</p> <p>1 MR. KATZ: Objection.</p> <p>2 A. I don't remember the specific action</p> <p>3 taken.</p> <p>4 Q. Would it have been your practice to</p> <p>5 delegate to someone to look into issues such as the</p> <p>6 ones raised in this letter?</p> <p>7 MR. KATZ: Objection.</p> <p>8 A. I don't believe I have a specific</p> <p>9 practice. I may have asked someone to look at it or</p> <p>10 I may have evaluated it myself.</p> <p>11 Q. Okay.</p> <p>12 Now, the next paragraph, the end of</p> <p>13 the fourth line says, "Instead, we have not added</p> <p>14 the people we need and against our wishes are still</p> <p>15 discussing the separation of people and systems we</p> <p>16 use to run our business and service our clients."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Do you remember doing anything</p> <p>20 particularly in response to this concern?</p> <p>21 A. I don't remember a specific response.</p> <p>22 MR. RICH: Mark this, please, as</p>	<p style="text-align: right;">Page 169</p> <p>1 responding to so I'm not sure -- I see factual</p> <p>2 information that's there. I'm not really sure what</p> <p>3 I may or may not have responded to from Jon. I'm</p> <p>4 just not really sure what it was.</p> <p>5 Q. Okay.</p> <p>6 What did you mean by "We will not be</p> <p>7 able to facilitate any additional headcount</p> <p>8 increases at this time"?</p> <p>9 A. I'm not sure if I'm responding to a</p> <p>10 request for headcount or not.</p> <p>11 Q. Okay.</p> <p>12 So the answer is you don't know?</p> <p>13 A. I'm not sure again what I'm</p> <p>14 responding to. Taking that sentence by itself, it</p> <p>15 essentially states again we're not looking to add</p> <p>16 headcount. Again, as far as what areas, I'm not</p> <p>17 really sure of the context of it.</p> <p>18 MR. KATZ: Are we done with that</p> <p>19 exhibit?</p> <p>20 MR. RICH: Yes. This will be the</p> <p>21 next exhibit.</p> <p>22 (Exhibit DeVoe-24, 3-page letter</p>

43 (Pages 166 to 169)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

Page 170	Page 172
<p>1 dated 12-7-99, Bates FR0043-045, received 2 and marked for identification.) 3 Q. Mr. DeVoe, I'm showing you a document 4 we have marked as Exhibit 24. 5 Do you recognize this letter? 6 A. It's a letter to me from Ann Raider 7 copying Ian Moore and Bob Fireman in December of 8 1999. 9 Q. Do you remember receiving this 10 letter? 11 A. I don't recall receiving the letter. 12 Q. Can you take a look at the letter and 13 see if any of the issues raised in this letter were 14 brought to your attention in the latter half of 15 1999? 16 A. (Examining document.) 17 I don't recall the specific issues. 18 I see them outlined in the letter. 19 Q. Okay. 20 So you simply have no recollection of 21 taking any action in response to any of the issues 22 listed in the letter?</p>	<p>1 MR. KATZ: Don't speculate. If you 2 can answer the question, fine. If you can't, 3 you can't. 4 MR. RICH: I'm asking him the 5 question. 6 MR. KATZ: The same instruction. 7 Don't speculate. 8 A. I'm not sure how I'd respond to it. 9 Q. I think we talked earlier about a 10 gentleman named Bill Adam. Do you remember that? 11 A. Yes. 12 Q. News America Marketing moved him to 13 Connecticut. Do you remember that? 14 MR. KATZ: Objection. 15 A. I recall Bill moving down to 16 Connecticut. I recall an opportunity was discussed 17 with him. I don't remember the specific opportunity 18 but I believe, I understand he was proposed with I 19 believe a larger role potentially in the company in 20 Connecticut. 21 Q. Were you involved in the decision to 22 offer him this opportunity?</p>
Page 171	Page 173
<p>1 A. I don't recall the recommended action 2 that I may have taken or may have discussed. 3 Q. Okay. 4 Had you been asked in December of 5 1999 to arrange for CCMI to present to the entire 6 NAM sales organization what CCMI does, would that 7 have been something you would have been in favor of 8 doing? 9 MR. KATZ: Can we have that question 10 read? 11 MR. RICH: Sure. 12 (Whereupon, the requested portion is 13 read back by the reporter as follows: 14 "QUESTION: Had you been asked in 15 December of 1999 to arrange for CCMI to 16 present to the entire NAM sales organization 17 what CCMI does, would that have been 18 something you would have been in favor of 19 doing?") 20 MR. KATZ: You're asking him to 21 speculate? 22 MR. RICH: Yes.</p>	<p>1 A. I believe I was in the dialogue. I 2 don't recall my specific view on it at the time. 3 Q. Who else was in the dialogue? 4 A. I don't recall. 5 Q. Do you have a memory of Ms. Raider or 6 Mr. Fireman expressing concern over this fact? 7 A. I don't recall. 8 Q. Do you remember Ms. Raider or 9 Mr. Fireman telling you that Mr. Adam was one of 10 their most valuable people and he was being taken 11 from them and not properly replaced? Do you 12 remember that? 13 A. No, I don't remember them stating 14 that. 15 MR. RICH: Mark this, please, as 16 the next exhibit. 17 (Exhibit DeVoe-25, 1-page email 18 dated 12-7-99, Bates NAM03590, received 19 and marked for identification.) 20 Q. Mr. DeVoe, I show you a document that 21 has been marked as Exhibit 25. If I can have you 22 turn back to Exhibit 24, do you recognize Exhibit 25</p>

44 (Pages 170 to 173)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 174</p> <p>1 as your response to Exhibit 24?</p> <p>2 A. Yes, and I can see my initials on it.</p> <p>3 Q. Where are your initials?</p> <p>4 A. DFD, upper right corner.</p> <p>5 Q. So that means that this came from</p> <p>6 your file?</p> <p>7 A. It came, yes, it must have come from</p> <p>8 a CCMI file.</p> <p>9 Q. You had a file in your office</p> <p>10 entitled CCMI?</p> <p>11 A. I'm not sure. I had many files in</p> <p>12 the office. I'm just looking at what it says.</p> <p>13 Q. These are your initials that appear</p> <p>14 in the upper right-hand corner of the document?</p> <p>15 A. Yes.</p> <p>16 Q. And then the words "file CCMI."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Does that lead you to believe that</p> <p>20 you had a file labeled CCMI or a series of files</p> <p>21 labeled CCMI?</p> <p>22 A. I'm not sure. It depends on the -- I</p>	<p style="text-align: right;">Page 176</p> <p>1 MR. KATZ: Objection.</p> <p>2 A. From the response, "Let's arrange</p> <p>3 ASAP," it's something I did, I believe was worth</p> <p>4 doing. Whether I had Jon help me on it or not, I</p> <p>5 can't recall.</p> <p>6 Q. Do you recall whether a meeting was</p> <p>7 arranged?</p> <p>8 A. I don't recall.</p> <p>9 Q. Do you know whether a meeting was</p> <p>10 arranged ASAP?</p> <p>11 A. I don't recall.</p> <p>12 Q. Have you ever been in Mr. Carlucci's</p> <p>13 presence where he stated that he saw no future in</p> <p>14 targeted direct mail?</p> <p>15 A. I don't recall that statement.</p> <p>16 Q. Do you remember him making any</p> <p>17 statements similar to that?</p> <p>18 A. I don't recall.</p> <p>19 Q. Did he ever express to you or --</p> <p>20 strike that.</p> <p>21 Did he ever express to a group of</p> <p>22 people of which you were part of the group</p>
<p style="text-align: right;">Page 175</p> <p>1 may have signed it and handed it over to my</p> <p>2 assistant. From there I can't tell.</p> <p>3 Q. If there was such a file of CCMI</p> <p>4 materials, what would have been in it?</p> <p>5 A. I'm not certain.</p> <p>6 Q. Now, under recommended actions which</p> <p>7 is about halfway down the page, in number 3 you say,</p> <p>8 "Let's arrange ASAP."</p> <p>9 A. Yes.</p> <p>10 Q. And this is a response to the</p> <p>11 recommended action for CCMI to present the entire</p> <p>12 News America Marketing sales organization with what</p> <p>13 CCMI does?</p> <p>14 A. Yes.</p> <p>15 Q. And then there's the word Rubin next</p> <p>16 to it?</p> <p>17 A. Yes.</p> <p>18 Q. Is that Jon Rubin?</p> <p>19 A. Yes.</p> <p>20 Q. And so is it fair to say that you</p> <p>21 thought this was something worth doing and asked Jon</p> <p>22 Rubin to arrange for it to be done?</p>	<p style="text-align: right;">Page 177</p> <p>1 discussing his views about targeted direct mail?</p> <p>2 A. Not that I remember.</p> <p>3 Q. Now, were you involved in the</p> <p>4 decision to preclude CCMI from placing trade</p> <p>5 advertising?</p> <p>6 MR. KATZ: Objection.</p> <p>7 A. Can you rephrase?</p> <p>8 Q. Sure. Let's start with the basic</p> <p>9 proposition.</p> <p>10 Are you aware of whether or not CCMI</p> <p>11 was permitted to place trade advertisements</p> <p>12 concerning its products once the stock purchase</p> <p>13 agreement was signed?</p> <p>14 A. I don't remember.</p> <p>15 Q. You have no memory one way or the</p> <p>16 other?</p> <p>17 A. No.</p> <p>18 Q. Were you involved in the Epiphany</p> <p>19 transaction?</p> <p>20 MR. KATZ: Objection.</p> <p>21 MR. RICH: Let me withdraw the</p> <p>22 question and ask it this way.</p>

45 (Pages 174 to 177)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

Page 178	Page 180
<p>1 Q. Are you familiar with a computer 2 software program called Epiphany? 3 A. I'm not very familiar with the 4 program. I'm aware the Epiphany product was 5 something that it was invested in. 6 Q. And News America invested in the 7 Epiphany product? 8 A. News America Marketing, yes. 9 Q. And were you involved in that 10 process? 11 MR. KATZ: Objection. 12 A. I would have been involved in the 13 process from the review standpoint because I assume 14 it was involving capital spending. I'm pretty sure 15 it was. So like with all capital projects, I would 16 have the ability at least to review the proposal. 17 Q. Did you have any involvement in 18 negotiating the purchase? 19 A. No. I don't recollect being 20 involved. 21 Q. How about Mr. Benson? Was he 22 involved?</p>	<p>1 A. I would have been involved in August. 2 I don't know how often I was involved again because 3 that group began reporting to another individual. 4 Q. Did you participate in strategy 5 sessions concerning CCMI? 6 A. I don't recall. 7 MR. RICH: Mark this, please, as 8 the next exhibit. 9 (Exhibit DeVoe-26, 3-page document 10 entitled Summary and Next Steps, CCMI 11 Strategy Session 11/17/99, Bates 12 NAM03585-3587, received and marked for 13 identification.) 14 Q. I'm showing you a document entitled 15 Summary and Next Steps, CCMI Strategy Session, 16 November 17th, 1999. 17 Do you see that? 18 A. Yes. 19 Q. You're listed as one of the attendees 20 of the meeting? 21 A. Yes. 22 Q. Do you have a memory of attending</p>
Page 179	Page 181
<p>1 A. Yes, I believe Dave was involved. 2 Q. And you were not? 3 A. I don't recall being involved. 4 Q. Was Mr. Fireman involved? 5 A. I don't remember. 6 Q. Do you remember an issue arising as 7 to the number of seats that were going to be 8 purchased? 9 A. No, I don't remember that issue. 10 Q. Okay. 11 Do you remember an issue arising as 12 to the capital allocation of the purchase to CCMI's 13 business? 14 A. I don't remember. 15 Q. Okay. 16 Did you participate in business 17 meetings concerning the management and operation of 18 CCMI? 19 MR. KATZ: Objection. 20 A. What time period? 21 Q. Let's start from August of 1999 until 22 September of 2001.</p>	<p>1 strategy sessions in the fall and winter of 1999 2 relative to CCMI? 3 A. I don't recall attending. From the 4 document I did attend but I don't recall it. 5 Q. Were there executive meetings in 6 News America Marketing in 1999 and 2000? 7 A. Yes. 8 Q. Did you participate in those 9 executive meetings? 10 A. Yes, I did. 11 Q. And were there a group of people who 12 typically would attend executive meetings? 13 A. What executive meetings? 14 Q. Well, were there different types of 15 executive meetings held by News America Marketing? 16 A. I'm just trying to understand how 17 you're referring to executive. There's lots of 18 meetings among executives in News America Marketing. 19 I just want to make sure I'm responding to your 20 request properly. 21 Q. Were there formal executive meetings 22 held by News America Marketing, not a meeting</p>

46 (Pages 178 to 181)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 182</p> <p>1 amongst executives but executive meetings that were 2 called for and held at a particular time? 3 A. Yes. 4 Q. Okay. 5 And were they typically held on 6 particular days of the week or days of the month? 7 A. Yes. We had an executive committee 8 meeting Monday mornings which was followed by a 9 management committee meeting. I forget exactly when 10 that started. Both on Monday if I remember. 11 Q. Were typically minutes created for 12 those meetings? 13 A. Yes. 14 Q. What would happen to those minutes 15 after the meeting was concluded? 16 A. I'm not sure what happened to the 17 minutes. 18 Q. Would you periodically receive after 19 the fact minutes summarizing what was discussed 20 during meetings? 21 MR. KATZ: Objection. 22 A. I don't remember.</p>	<p style="text-align: right;">Page 184</p> <p>1 Were minutes maintained at those 2 meetings? 3 A. I don't remember. 4 Q. Who participated in the executive 5 committee meetings on Monday? 6 A. It would have been the senior 7 executives of the company. 8 Q. Who would that include? 9 A. What time period? 10 Q. Let's take 1999 and 2000. 11 A. Okay. I'll preface it. I'm just 12 going to provide the names I feel those individuals 13 were there. I'm not certain of the -- I can't 14 remember exactly the committee in that time period. 15 It would have been Paul Carlucci, 16 Dominick Porco, Dave Benson, Ian Moore, Chris 17 Mixson. There were other members. I'm just not 18 certain at this point who they were. 19 Q. Did CCMI's business, the management 20 of CCMI's business come up at any executive 21 committee meeting in 1999 or 2000? 22 A. I don't recall.</p>
<p style="text-align: right;">Page 183</p> <p>1 Q. Do you ever remember receiving 2 minutes after a meeting? 3 A. I don't remember if I received 4 minutes or not. 5 Q. Okay. 6 Did you personally have a practice 7 regarding note-taking at executive committee 8 meetings? 9 MR. KATZ: Objection. 10 A. I may have taken notes. I didn't 11 have a practice of maintaining or keeping the notes. 12 Q. So your practice was to take notes 13 and, if you took notes, discard the notes after the 14 matters reflected in the notes were addressed or 15 dealt with? 16 MR. KATZ: Objection. 17 A. I would take my notes and then 18 respond or do whatever I saw fit with them. 19 Q. Okay. 20 And how about management committee 21 meetings? Were minutes circulated from those 22 meetings? Strike that.</p>	<p style="text-align: right;">Page 185</p> <p>1 Q. Do you recall whether Ann Raider or 2 Bob Fireman came up at any executive committee 3 meeting in 1999 or 2000? 4 A. I don't recall if they specifically 5 came up. 6 Q. Okay. 7 How about management committee 8 meetings? Who participated in those? 9 A. There were a number of individuals. 10 Q. Okay. 11 Are you able to identify them with 12 any precision? 13 A. No. There were probably fifty or 14 more individuals who participated in that meeting 15 which was generally a brief update of what was going 16 on in the business. 17 Q. To your knowledge did Mr. Fireman or 18 Ms. Raider attend any executive committee meetings? 19 A. I don't recall. 20 Q. Do you recall them ever attending 21 one? 22 A. I don't recall if they presented at</p>

47 (Pages 182 to 185)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 186</p> <p>1 the executive committee or not.</p> <p>2 Q. How about the management committee</p> <p>3 meetings? Did Ms. Raider and Mr. Fireman ever</p> <p>4 attend those meetings?</p> <p>5 A. I'm not sure. If they did, they</p> <p>6 would have done it via phone and I'm not certain if</p> <p>7 they did or not.</p> <p>8 Q. So people participated in the</p> <p>9 management committee meetings by teleconference from</p> <p>10 time to time?</p> <p>11 A. Every week there were a number of</p> <p>12 individuals at all of our outside sales offices and</p> <p>13 potentially our field offices who would participate</p> <p>14 in that meeting. I don't know the exact number.</p> <p>15 MR. KATZ: Can we take a break?</p> <p>16 (Break taken from 2:57 p.m. to</p> <p>17 3:13 p.m.)</p> <p>18 Q. Mr. DeVoe, showing you Exhibit 25 for</p> <p>19 one moment, showing you your email again, the 7th</p> <p>20 recommended action item, going back to Exhibit 24,</p> <p>21 Ms. Raider is suggesting a CCMI executive group.</p> <p>22 Do you see that?</p>	<p style="text-align: right;">Page 188</p> <p>1 Then why would you request that</p> <p>2 minutes be maintained as requested by Paul Carlucci</p> <p>3 and Dominick Porco?</p> <p>4 A. Generally, I forget the timing, there</p> <p>5 was different groups that would have departmental</p> <p>6 meetings or updates. The finance group, this would</p> <p>7 be an opportunity for them if there was a meeting</p> <p>8 just to read the minutes and be updated on what's</p> <p>9 happening with the business.</p> <p>10 So it would have been something I</p> <p>11 don't know if I talked to them about it but</p> <p>12 something that I probably would have thought would</p> <p>13 be helpful for them.</p> <p>14 Q. Okay.</p> <p>15 And is Paul Carlucci an individual</p> <p>16 who liked minutes to be maintained at meetings to</p> <p>17 memorialize what was said?</p> <p>18 MR. KATZ: Objection.</p> <p>19 A. You'd have to ask Paul.</p> <p>20 Q. Is that your experience with him?</p> <p>21 MR. KATZ: Objection.</p> <p>22 A. My experience is we took minutes at</p>
<p style="text-align: right;">Page 187</p> <p>1 MR. KATZ: I'm sorry. Where are</p> <p>2 they?</p> <p>3 MR. RICH: Exhibit 24, action item</p> <p>4 number 7.</p> <p>5 MR. KATZ: 24 is the December 7, 1999</p> <p>6 letter.</p> <p>7 Q. The third physical page talks about</p> <p>8 establishing a CCMI executive group and you respond</p> <p>9 to that by saying, "Let's discuss" and then go on to</p> <p>10 say, "Minutes would be maintained as requested by</p> <p>11 Paul and Dom."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Paul is Paul Carlucci?</p> <p>15 A. Yes.</p> <p>16 Q. And Dom is Dominick Porco?</p> <p>17 A. Yes.</p> <p>18 Q. So is it fair to say that you would</p> <p>19 run at least that item in Ms. Raider's letter by</p> <p>20 Mr. Carlucci and Mr. Porco?</p> <p>21 A. No, I may not have run that by them.</p> <p>22 Q. Okay.</p>	<p style="text-align: right;">Page 189</p> <p>1 some of the meetings.</p> <p>2 MR. RICH: Let's mark this as</p> <p>3 the next exhibit.</p> <p>4 (Exhibit DeVoe-27, 3-page letter</p> <p>5 dated 9-11-00, Bates FR0033-35, received</p> <p>6 and marked for identification.)</p> <p>7 Q. Mr. DeVoe, I show you what's been</p> <p>8 marked Deposition Exhibit 27.</p> <p>9 Do you recognize this document?</p> <p>10 A. It's a letter from Ann and Bob with a</p> <p>11 copy to Chris Mixson and it was sent to me.</p> <p>12 Q. Do you have a memory of receiving</p> <p>13 this letter in the early part of September of 2000?</p> <p>14 A. I don't recall receiving the letter.</p> <p>15 Q. September 11th, 2000 was about three</p> <p>16 weeks after the stock agreement was executed.</p> <p>17 Sorry. It was thirteen months. I'm sorry.</p> <p>18 A. Yes.</p> <p>19 Q. Now, reading through Exhibit 27, do</p> <p>20 you recall any of these issues being brought to your</p> <p>21 attention?</p> <p>22 A. I see the issues raised in the</p>

48 (Pages 186 to 189)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 190</p> <p>1 letter. I don't specifically recall receiving a 2 letter or any action taken. 3 Q. Do you recall responding to this 4 letter? 5 A. I don't remember responding to the 6 letter. I may have responded. I just don't recall. 7 Q. The third paragraph, the second 8 sentence says, "Rather than reinforce and supplement 9 CCMI's resources, NAM has taken our essential talent 10 and marginalized our role in directing the growth of 11 the business. Instead of letting us build upon our 12 business with NAM's support, NAM took a course to 13 assimilate CCMI's concepts, products, and personnel 14 into NAM's business units." 15 Do you see that? 16 A. Yes, I see it. 17 Q. Do you agree with that statement? 18 A. No, I wouldn't agree. 19 Q. Is there any aspect of that sentence 20 and a half that you would agree with? 21 A. (Examining document.) 22 I'm not sure exactly what's being</p>	<p style="text-align: right;">Page 192</p> <p>1 budget and have never seen the P&Ls for our 2 division." 3 Do you know whether as of September 4 of 2000 Ms. Raider or Mr. Fireman had been provided 5 access to the P&Ls for CCMI? 6 A. I don't recall when they received or 7 what they were provided as it relates to CCMI. 8 Q. Okay. 9 A. I mean I understand there was an 10 obligation to provide financials as it related to 11 the end-of-year calculation but I'm not sure what 12 they received or didn't receive on a daily basis or 13 monthly basis. 14 Q. Is it consistent with your memory 15 that Ms. Raider and Mr. Fireman were removed from 16 all financial, technical, and technical decisions as 17 of September of 2000? 18 A. I don't recall. 19 Q. Now, skipping the next sentence but 20 starting with the sentence, "We have been told that 21 our earn-out" -- 22 Do you see that?</p>
<p style="text-align: right;">Page 191</p> <p>1 referred to in the bottom half of it. If there is 2 some assimilation of products and personnel, that 3 I'm not sure. 4 Q. Well, you know, for example, that 5 Bill Adams was assimilated into NAM's business 6 units. Correct? 7 MR. KATZ: Objection. 8 A. I don't recall him exactly being 9 assimilated. I recall him being offered an 10 opportunity. 11 Q. And he then moved to Connecticut? 12 A. He did move to Connecticut. Again 13 I'm not really sure if his responsibility as it 14 relates to what he was doing or what he was doing 15 while he was still supporting CCMI or not. I just 16 don't recall his exact role. 17 Q. On the fourth physical paragraph, the 18 8th line, the sentence at the end of the line 19 beginning with moreover, Ms. Raider and Mr. Fireman 20 write, "Moreover we have been removed from all 21 financial, technical, and technical decisions. We 22 only have limited knowledge of an input into the</p>	<p style="text-align: right;">Page 193</p> <p>1 A. Yes. 2 Q. It says, "We have been told that our 3 earn-out created a conflict of interest and on that 4 basis we have been excluded from decision-making and 5 management." 6 Were you ever made aware that because 7 Fireman and Raider's earn-out created a conflict 8 that they were excluded from decision-making and 9 management? 10 A. No, I don't recall that. 11 Q. Do you have any memory of 12 participating in a meeting where anybody else 13 indicated that Fireman and Raider were being 14 excluded from decision-making and management because 15 their earn-out created a conflict of interest? 16 A. I don't recall being at such a 17 meeting. 18 Q. Do you believe that Fireman's and 19 Raider's earn-out created a conflict of interest for 20 them vis-a-vis decision-making and management? 21 A. No. 22 MR. RICH: Mark this, please, as</p>

49 (Pages 190 to 193)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

Page 194	Page 196
<p>1 the next exhibit. 2 (Exhibit DeVoe-28, 5-page email 3 dated 11-15-99, Bates FR0415-0419, received 4 and marked for identification.) 5 Q. Mr. DeVoe, I show you what's been 6 marked as Deposition Exhibit 28. Do you recognize 7 this as an email exchange between yourself and 8 Mr. Fireman and Mr. Rubin? 9 A. And others as well. 10 Q. I'm just focused for now on the 11 people to whom the text of the email was addressed 12 but you're correct. 13 A. Okay. 14 Q. Do you have any recollection of 15 receiving the email which begins on the second 16 physical page at the top from Mr. Fireman on 17 November 15th, 1999? 18 A. I don't remember receiving it. 19 Q. Do you remember any discussion 20 concerning the contents of Mr. Fireman's email? 21 A. Let me take a moment to read it. 22 Q. Absolutely.</p>	<p>1 for lack of a better word? 2 A. With contemplating the concern 3 they've had and still determining that the staffing 4 decisions we thought we should make were still in 5 the best interests of the business. 6 Q. In the best interests of whose 7 business? 8 A. News America Marketing. 9 Q. Now, Mr. Fireman's response to your 10 email states on the third line, "The problem is that 11 these actions will leave no trained, experienced 12 staff at CCMI to service our clients. This coupled 13 with no available or trained support at NAM will 14 critically affect the CCMI business." 15 Do you see that? 16 A. Yes. 17 Q. And the next paragraph, picking up 18 in the middle of the sentence but you can certainly 19 read the whole thing, it states that these issues 20 will "jeopardize CCMI's ability to service our 21 clients or products." 22 Was that a concern to you?</p>
Page 195	Page 197
<p>1 A. (Examining document.) 2 I don't remember the specific content 3 in the email. I do remember the general discussion 4 about staffing and relocation of employees. 5 Q. With whom did you have these 6 communications? 7 A. I remember having conversations I 8 believe with Ann and Bob receiving their opinion. I 9 believe Ian Moore from our human resource group. 10 Q. What do you remember Ann and Bob 11 saying to you about those issues? 12 A. I think they had some concerns over 13 the integration of some of those jobs into 14 Connecticut. 15 Q. What was your response, if any? 16 A. I don't recall my exact response. 17 Q. Do you remember your general 18 response? 19 A. Just from reviewing Exhibit 28, it 20 appears my response is we planned to move forward 21 with the personnel changes. 22 Q. Over Fireman and Raider's objections</p>	<p>1 A. I don't recall. 2 Q. Do you know what was done in response 3 to Mr. Fireman's response to your email? 4 A. No. I don't remember if there was a 5 response. 6 MR. RICH: Mark this as the next 7 exhibit, please. 8 (Exhibit DeVoe-29, 1-page email 9 dated 1-13-00, Bates FR0021, received and 10 marked for identification.) 11 Q. Mr. DeVoe, Exhibit 29 is an email 12 that you sent to Ms. Raider and Mr. Fireman on 13 January 13th of 2000. 14 Do you see that? 15 A. Yes. 16 Q. Do you remember sending this email? 17 A. I don't remember sending it. 18 Q. Do you remember the context in which 19 this email was sent? 20 A. No, I don't. 21 Q. Okay. 22 You say in the second line of your</p>

50 (Pages 194 to 197)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

<p style="text-align: right;">Page 198</p> <p>1 email, "News America will be taking a hands-on role 2 in helping to create the overall strategy and 3 execute such strategy for the division." 4 What overall strategy were you 5 referring to? 6 A. The overall strategy of looking at 7 the document, interpreting the document. I can't be 8 exactly sure but it appears to me that the overall 9 strategy being referenced is the strategy to grow 10 CCMI. 11 Q. And it was your expectation that 12 News America personnel would be taking a hands-on 13 role in helping to do that? 14 A. I believe that was a benefit, yes. 15 MR. RICH: With that, Mr. DeVoe, 16 I thank you for your time this afternoon. 17 MR. KATZ: I just want to take a 18 second. We may have a question or two. 19 (Break taken from 3:31 p.m. to 20 3:34 p.m.) 21 EXAMINATION BY MR. KATZ: 22 Q. Mr. DeVoe, do you remember this</p>	<p style="text-align: right;">Page 200</p> <p>1 A. The email on my computer? 2 Q. Yes. 3 A. Yes. 4 Q. What did you do to search your email 5 on your computer? 6 A. The email, I think I looked at my 7 computer, went through my historical files. I 8 didn't have any documents relating to CCMI. 9 Q. Do you have an Exchange, Microsoft 10 Exchange email server? 11 A. I believe so. 12 Q. And within that server you have 13 certain folders, like an inbox folder. Right? 14 A. Yes. 15 Q. A sent items folder? 16 A. Yes. 17 Q. A deleted items folder? 18 A. Yes. 19 Q. And various archived folders? 20 A. Yes. 21 Q. Okay. 22 Did you do anything to search those</p>
<p style="text-align: right;">Page 199</p> <p>1 morning Mr. Rich asked you some questions regarding 2 your searching for documents responsive to the 3 subpoena that had been issued for you in this case? 4 A. Yes. 5 Q. And you told Mr. Rich that you had 6 searched your hard drive and you had searched your 7 paper records and you had not found any documents? 8 A. Yes. 9 Q. And do you remember that sometime in 10 2006 someone from my office contacted you to ask you 11 to search for any documents relevant to the issues 12 in this lawsuit? 13 A. Yes. 14 Q. And can you tell us what you did in 15 response to that request? 16 A. I reviewed the hard drive of my 17 computer, reviewed the files in my office, and I 18 didn't find any documents. 19 MR. KATZ: Thank you. That's it. 20 EXAMINATION BY MR. RICH: 21 Q. Did you undertake any search of your 22 email?</p>	<p style="text-align: right;">Page 201</p> <p>1 individual folders? 2 A. Yes, I did. 3 Q. What did you do? 4 A. I went through my archived folders 5 which are mostly Fox Entertainment Group-related 6 information. 7 Q. How far back did your archived emails 8 go? 9 A. I'm not sure how far. The emails 10 were related to ever since I've been at my position 11 at Fox. I'm not sure how far certain information 12 went. I go through my email generally daily. 13 Q. Now, when you were at News America, 14 you had a newsamerica.com email address? 15 A. Yes. 16 Q. Do you continue to have a 17 newsamerica.com email address? 18 A. No. 19 Q. You have a Fox? 20 A. I have a newscorp.com email address. 21 Q. Do you still have access to your 22 newsamerica.com email?</p>

51 (Pages 198 to 201)

DeVoe, Jr., David F.

June 13, 2007

New York, NY

Page 202

1 A. No.
 2 Q. When you went to search on your
 3 Exchange server, you didn't have access to any email
 4 that was sent to ddevoe@newsamerica.com?
 5 A. No.
 6 Q. But you independently searched for
 7 your newscorp.com emails for potentially relevant
 8 emails?
 9 A. My active email account, I'm not sure
 10 what happened with that email account. I imagine it
 11 was closed at one point.
 12 MR. RICH: That's all I have.
 13 MR. KATZ: Thank you.
 14 (Deposition proceedings concluded at
 15 3:58 p.m.)
 16
 17
 18
 19
 20
 21
 22

Page 204

1 CERTIFICATE
 2 I, MARGE TEILHABER, a Certified Shorthand
 3 Reporter and Notary Public of the States of New
 4 Jersey and New York, do hereby certify that prior to
 5 the commencement of the examination, the witness was
 6 sworn by me to testify to the truth, the whole truth
 7 and nothing but the truth.
 8 I do further certify that the foregoing is a
 9 true and accurate 204-page transcript of the
 10 testimony as taken stenographically by and before me
 11 at the time, place and on the date hereinbefore set
 12 forth.
 13 I do further certify that I am neither of
 14 counsel nor attorney for any party in this action
 15 and that I am not interested in the event nor
 16 outcome of this litigation.
 17 Pursuant to Federal Rule of Civil Procedure
 18 30(e), the witness/attorney has requested review of
 19 the transcript, and if any changes are made, they
 20 will be appended to the transcript.
 21
 22

14 Notary Public of the States of NJ, NY, and CT
 15
 16 New Jersey I.D. No. 64424
 17 New Jersey commission expires August 7, 2011
 18 New York registration No. 01TE4741157
 19 New York commission expires February 28, 2010
 20
 21
 22

Page 203

1
 2
 3
 4 _____
 5 SIGNATURE OF THE WITNESS
 6
 7 Subscribed and sworn to and before me
 8 this _____ day of _____, 20____.
 9
 10
 11 _____
 12 Notary Public
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22

52 (Pages 202 to 204)

Henderson Legal Services
 202-220-4158

EXHIBIT B

LELLOUCHE-5/25/07

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Page 3

1 Volume: I
2 Pages: 1 to 255
3 Exhibits: 1 to 11

4 UNITED STATES DISTRICT COURT
5 FOR THE DISTRICT OF MASSACHUSETTS

6 * * * * *
7 ROBERT FIREMAN and ANN RAIDER,
8 Plaintiffs,

9 vs.

Civil Action
No. 05-1740 MLW

10 NEWS AMERICA MARKETING IN-STORE,
11 INC.,

12 Defendant.
13 * * * * *

14 DEPOSITION OF HENRI F. LELLOUCHE, a
15 witness called on behalf of the Plaintiffs, taken
16 pursuant to the applicable provisions of the
17 Massachusetts Rules of Civil Procedure before Cynthia A.
18 Powers, Shorthand Reporter and Notary Public in and for
19 the Commonwealth of Massachusetts, at the law offices of
20 Todd & Weld, LLP, 28 State Street, Boston,
21 Massachusetts, on Friday, May 25, 2007, commencing at
22 8:07 a.m.

23 * * * * *

24 KACZYNSKI REPORTING
72 CHANDLER STREET, SUITE 3
BOSTON, MASSACHUSETTS 02116
(617) 426-6060

1 I N D E X
2 Examination by: Direct Cross Redirect Recross
3 Mr. Peters 4

E X H I B I T S			Page
Exhibit			
1	Memorandum, 5/14/99		90
2	E-mail, 4/4/00		211
3	E-mail, 5/18/00		215
4	Memorandum, 4/10/00		219
5	Memorandum, 4/12/00		222
6	E-mail, 6/1/00		233
7	E-mail, 6/1/00		234
8	E-mail, 8/25/00		238
9	E-mail, 9/13/01		240
10	E-mail, 11/24/04		244
11	E-mail, 6/23/04		251

Page 2

1 APPEARANCES:

2 TODD & WELD, LLP
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6 (617) 720-2626
7 Representing the Plaintiffs

8 HOLLAND & KNIGHT LLP
9 Gordon P. Katz, Esquire
10 10 St. James Avenue
11 Boston, Massachusetts 02116-3889
12 (617) 573-5839
13 Representing the Defendant

14 ALSO PRESENT:

15 Robert Fireman
16 Ann Raider
17 Jordan Lippner

Page 4

1 PROCEEDINGS

2 MR. PETERS: Gordon, I propose we have
3 the same stipulations we had: Reserve objections,
4 except to the form of the question, until the time of
5 trial or use of the transcript in a dispositive motion;
6 reserve motions to strike; we'll have the witness read
7 and sign under penalty, waive notary.

8 MR. KATZ: Agreeable.

9 HENRI F. LELLOUCHE,

10
11 having been satisfactorily identified
12 and duly sworn by the Notary Public,
13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. PETERS:

16 Q. Good morning, Mr. Lellouche. My name is
17 Kevin Peters. I represent Robert Fireman and Ann
18 Raider. Would you introduce yourself to us, please, for
19 the record?

20 A. My name is Henri Lellouche. I work for
21 News America Marketing. I'm the general manager of the
22 SmartSource iGroup.

23 Q. Where do you live?
24

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LELLOUCHE-5/25/07

Page 5

Page 7

1 A. I live at 70 Flax Road in Fairfield,
2 Connecticut 06824.
3 Q. Would you give us a brief description of
4 your education?
5 A. I have a bachelor of science degree from
6 Cornell University, 1983.
7 Q. What is your concentration?
8 A. Hotel administration.
9 Q. Once you graduated in '83 from Cornell,
10 could you take us through your job path?
11 A. Oh, sure. I left school and I
12 immediately went into the hotel business. I worked for
13 Sheraton Hotels until 1986, at which time I left the
14 hotel industry and went to work for a small startup in
15 Star Marketing Company called Act Media, and I worked at
16 Act Media until 1992. I left there as vice-president of
17 retail sales to go to work for an investment firm that
18 was investing in product development specifically
19 related to in-store marketing which was called ARM. I
20 worked there until 1996, at which time I joined News
21 America FSI with the intent of starting an in-store
22 division on their behalf, and I've been there since.
23 Q. What were your job responsibilities at
24 Sheraton?

1 A. It was very simply buying up the rights
2 to advertise exclusively on shopping carts, buying up
3 the rights to advertise exclusively on the shelves;
4 couponing on the shelves, on the aisle directories;
5 doing in-store demonstrations, things like that.
6 Q. What job experience did you have in
7 Sheraton that allowed to you step into the position at
8 Act Media?
9 A. I had none.
10 Q. How did you learn the trade?
11 A. I'm not sure I understand.
12 Q. Well, you were buying and managing or
13 buying and selling -- let me start again.
14 Your work in managing restaurants,
15 et cetera, at Sheraton, was there any experience at that
16 job that allowed you to do the work that you undertook
17 at Act Media?
18 A. None.
19 Q. So how did you acquire the skills at Act
20 Media?
21 A. Act Media had a close affiliation with
22 the Cornell staff.
23 Q. How did that help you learn your trade?
24 A. They recruited -- it didn't help me learn

Page 6

Page 8

1 A. I was a food and beverage manager working
2 my way up through the ranks.
3 Q. Food and beverage manager at a hotel?
4 A. Yes, sir.
5 Q. Which hotel?
6 A. I worked at the Sheraton New York, the
7 Sheraton Washington, the Sheraton Dallas Hotel and
8 Towers, Sheraton Greensboro, that's it.
9 Q. Always with the same job?
10 A. Different levels.
11 Q. Okay, but food and beverage purchasing?
12 A. Yes.
13 Q. Managing?
14 A. Managing restaurants, bars, catering
15 functions, things of that nature.
16 Q. At Act Media what were your job
17 responsibilities?
18 A. I started out as the southeast retail
19 manager for Act Media where I was in charge of enlisting
20 retailers into the various Act Media in-store programs
21 by buying up real estate rates.
22 Q. Give me a little bit more of a detailed
23 description about what those job responsibilities
24 included.

1 my trade.
2 Q. What did the Cornell staff do?
3 A. They were looking for graduates of
4 Cornell to go work for this small startup company and I
5 among several others were recruited.
6 Q. Did you receive any training? At Act
7 Media did you receive any training?
8 A. On-the-job training.
9 Q. Any formal training in advertising?
10 A. No.
11 Q. Marketing?
12 A. No.
13 Q. Did you have any marketing experience
14 prior to taking the position at Act Media?
15 A. No.
16 Q. Did you take any marketing classes at
17 Cornell?
18 A. Basic marketing classes.
19 Q. And you went from Act Media to an
20 investment firm in 1996?
21 A. 1992.
22 Q. You were in Act Media in '92; correct?
23 A. I left Act media in --
24 Q. You left Act Media in '92. I apologize,

LELLOUCHE-5/25/07

Condenselt™

Page 9	Page 11
<p>1 my notes are confusing to me. You left Act Media in</p> <p>2 '92. You went to an investment firm. You stayed there</p> <p>3 until '96?</p> <p>4 A. Yes.</p> <p>5 Q. What was the name of the investment firm?</p> <p>6 A. Advanced Retail Marketing.</p> <p>7 Q. What was your position there?</p> <p>8 A. I was the vice-president of retail sales</p> <p>9 and operations.</p> <p>10 Q. Okay, and how big was that firm?</p> <p>11 A. It was very small, maybe five or six</p> <p>12 people.</p> <p>13 Q. How did you get the job?</p> <p>14 A. The investor who was also the head of the</p> <p>15 organization recruited me from Act Media.</p> <p>16 Q. Who was that person?</p> <p>17 A. Norton Garfinkle, G A R F I N K L E.</p> <p>18 Q. Where does Mr. Garfinkle live these days?</p> <p>19 A. In Manhattan.</p> <p>20 Q. Did you still correspond with him?</p> <p>21 A. No.</p> <p>22 Q. Let's go back briefly to Act Media. How</p> <p>23 big was that company?</p> <p>24 A. When I joined it was in the thirty to</p>	<p>1 to the details of the acquisition. I'm not sure of the</p> <p>2 correct word.</p> <p>3 Q. Do you know why; is it antitrust or</p> <p>4 otherwise?</p> <p>5 A. It was antitrust.</p> <p>6 Q. Okay. Do you know what happened in that</p> <p>7 investigation?</p> <p>8 A. The justice department passed and allowed</p> <p>9 the acquisition to occur.</p> <p>10 Q. Now, at the time Act Media was acquired</p> <p>11 you were already working for NAM?</p> <p>12 A. Yes.</p> <p>13 Q. Between Act Media and NAM you worked for</p> <p>14 the investment firm Advanced Retail Marketing; is that</p> <p>15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. And can you tell me your job</p> <p>18 responsibilities at Advanced Retail Marketing?</p> <p>19 A. To develop products.</p> <p>20 Q. What products did you develop?</p> <p>21 A. I developed a product called the super</p> <p>22 end aisle, which was an coupon device that was</p> <p>23 positioned at the display points at the end of a</p> <p>24 shopping aisle that issued coupons in connection with</p>
Page 10	Page 12
<p>1 fifty million dollar range.</p> <p>2 Q. When you left how big was it?</p> <p>3 A. Something in the neighborhood of one</p> <p>4 hundred million.</p> <p>5 Q. Is it still in business?</p> <p>6 A. It was purchased by News America</p> <p>7 Marketing, actually News Corporation.</p> <p>8 Q. Now, were you involved in that</p> <p>9 acquisition?</p> <p>10 A. Yes.</p> <p>11 Q. What was your role in the acquisition of</p> <p>12 Act Media?</p> <p>13 A. I was recruited to start an in-store</p> <p>14 division for News America Marketing that was to compete</p> <p>15 head to head with Act Media.</p> <p>16 Q. And were you involved in the due</p> <p>17 diligence in the Act Media acquisition?</p> <p>18 A. None.</p> <p>19 Q. Did you have any role in the acquisition</p> <p>20 of Act Media?</p> <p>21 A. Only in that I was deposed by the justice</p> <p>22 department as it related to the acquisition.</p> <p>23 Q. For what reason?</p> <p>24 A. The justice department was inquiring as</p>	<p>1 products on sale and on display.</p> <p>2 Q. So some device in the store itself that</p> <p>3 had coupons?</p> <p>4 A. Yes.</p> <p>5 Q. A red flashing light or otherwise that</p> <p>6 I've seen?</p> <p>7 A. LED.</p> <p>8 Q. And did you have any experience doing</p> <p>9 direct marketing at Act Media?</p> <p>10 A. I'm not sure I understand the question.</p> <p>11 Q. Targeted marketing, do you know what that</p> <p>12 is?</p> <p>13 A. I do.</p> <p>14 Q. Did you do any targeted marketing at Act</p> <p>15 Media?</p> <p>16 A. It depends on your definition of target.</p> <p>17 Q. What's your definition?</p> <p>18 A. We are reaching people that are shopping</p> <p>19 in the aisles on the shelves.</p> <p>20 Q. Did you do any work at Act Media to</p> <p>21 identify buying trends of consumers?</p> <p>22 A. Yes.</p> <p>23 Q. Tell me about that.</p> <p>24 A. We looked at various IRI data and other</p>

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LELLOUCHE-5/25/07

Page 13	Page 15
<p>1 types of available information to understand shopping 2 dynamics. 3 Q. What's IRI? 4 A. Information Resources, Incorporated 5 produces reports and information based on aggregated 6 information from retailers' data. 7 Q. Did you do any research -- let me the 8 strike that. 9 When you were at Act Media did you do any 10 research to determine specific buying trends of specific 11 consumers? 12 A. No. 13 Q. Was it available; in other words, was 14 that being done at the time you were at Act Media from 15 '92 to '96? 16 A. It was not being done by Act Media. 17 Q. Was it being done by any other company 18 that you worked with? 19 A. Yes, I believe so. 20 Q. Which company or companies? 21 A. I believe Ukrops was the first or among 22 the first to start utilizing purchase behavior data if I 23 recall correctly. 24 Q. U C R --</p>	<p>1 that come about? 2 A. Advanced Retail Marketing, we developed a 3 coupon machine concept that was designed to compete with 4 Act Media, and we were going to market it ourselves; 5 however, we were rebuffed in the marketplace, saying 6 that we were too small, saying that we needed a partner, 7 at which point we went out and sought partners in the 8 marketing community. News America Marketing showed 9 interest and opted not to partner but to acquire the 10 intellectual property, and I went along with the deal. 11 Q. So there was some type of stock 12 acquisition? 13 A. I don't believe so. 14 Q. How do you think the transaction 15 occurred? 16 A. It was a pay out in dollars based on 17 milestones achieved. 18 Q. Was Advanced Retail Marketing a 19 corporation? 20 A. I don't know. 21 Q. Were you a shareholder or partner or 22 otherwise have an interest in Advanced Retail Marketing? 23 A. No. 24 Q. Do you know what the terms of the deal</p>
Page 14	Page 16
<p>1 A. U K R O P S. 2 Q. And where was this company based? 3 A. In Virginia. 4 Q. How did they do their work as best you 5 know? 6 A. Through loyalty cards collecting 7 information based on purchase behavior. 8 Q. Did you do any of that type of work when 9 you were at the investment firm Advanced Retail 10 Marketing; in other words, purchase behavior analysis? 11 A. No. 12 Q. Was the first time you were ever involved 13 in purchase behavior analysis at News America Marketing? 14 A. Yes. 15 Q. And was that in connection with your work 16 at CCM? 17 A. Yes. 18 Q. Prior to CCM had you done any purchase 19 behavior analysis? 20 A. No. 21 Q. Had News America? 22 A. I don't know. 23 Q. How did you go -- take me from the 24 Advanced Retail Marketing firm to News America. How did</p>	<p>1 were between News America and Advanced Retail Marketing 2 in a general way? 3 A. Only as I've described to you. 4 Q. Did you tell Bob Fireman that you 5 believed you were screwed in that acquisition; your 6 words, not mine? 7 A. I can't recall. 8 Q. Do you remember saying anything about 9 that acquisition, NAM's treatment of you in that 10 acquisition that was derogatory in any way? 11 A. I knew I could have made more money had I 12 had better foresight. 13 Q. What did you tell him in that regard? 14 A. Probably just that. 15 Q. Was there a lawsuit involving Advanced 16 Retail? 17 A. Yes. 18 Q. Was it against News America? 19 A. Yes. 20 Q. Were you deposed in that case? 21 A. Yes. 22 Q. What was the basis of the lawsuit? 23 A. The basis was that News America Marketing 24 had not paid out the full monies that ARM believed they</p>

LELLOUCHE-5/25/07

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Page 17	Page 19
<p>1 were due.</p> <p>2 Q. And was this some type of earn out?</p> <p>3 A. I don't know the definition of earn out</p> <p>4 as it relates to this.</p> <p>5 Q. Well, what was the money that ARM claimed</p> <p>6 that it was due that it didn't get?</p> <p>7 A. It was money due to milestones reached</p> <p>8 that they believed that they had reached.</p> <p>9 Q. Was any of that money due to you?</p> <p>10 A. No.</p> <p>11 Q. What happened with the lawsuit?</p> <p>12 A. ARM prevailed.</p> <p>13 Q. Do you remember the causes of action?</p> <p>14 A. No.</p> <p>15 Q. Do you remember where it was pending?</p> <p>16 A. I don't understand the question.</p> <p>17 Q. Where was the lawsuit brought?</p> <p>18 A. In New York.</p> <p>19 Q. State court or federal court?</p> <p>20 A. I don't know.</p> <p>21 Q. Who represented ARM?</p> <p>22 A. I don't know.</p> <p>23 Q. Who represented News America?</p> <p>24 A. Hogan & Hartson.</p>	<p>1 Q. And when you were deposed was there a</p> <p>2 lawyer there like Mr. Katz is here today sitting next to</p> <p>3 you?</p> <p>4 A. Yes.</p> <p>5 Q. Was that ARM's lawyer?</p> <p>6 A. No.</p> <p>7 Q. Was it your personal lawyer?</p> <p>8 A. My personal lawyer, no.</p> <p>9 Q. Who was it? Who sat next to you at your</p> <p>10 deposition in the ARM litigation?</p> <p>11 A. I don't recall.</p> <p>12 Q. Do you recall his or her affiliation to</p> <p>13 the litigation?</p> <p>14 A. Affiliation in what sense?</p> <p>15 Q. Let me ask it in my native tongue, which</p> <p>16 is English: Why was he there?</p> <p>17 A. I would imagine the same reason that</p> <p>18 Gordon is here, to advocate me.</p> <p>19 Q. Do you know who paid this attorney?</p> <p>20 A. I don't know that.</p> <p>21 Q. Was it a man or a woman?</p> <p>22 A. I don't recall.</p> <p>23 Q. When was the deposition, what year?</p> <p>24 A. I don't know.</p>
Page 18	Page 20
<p>1 Q. Do you have a copy of your deposition?</p> <p>2 A. No.</p> <p>3 Q. Were you represented at the deposition?</p> <p>4 A. Yes.</p> <p>5 Q. Were you represented by the attorneys</p> <p>6 that represented ARM?</p> <p>7 A. Yes.</p> <p>8 MR. KATZ: Off the record just for a</p> <p>9 moment.</p> <p>10 (Discussion held off the record)</p> <p>11 BY MR. PETERS:</p> <p>12 Q. Were you represented by the attorneys</p> <p>13 that represented ARM?</p> <p>14 A. Was I --</p> <p>15 Q. Let me back up, Mr. Lellouche, to clear</p> <p>16 up any confusion. You were deposed in the ARM</p> <p>17 litigation; correct?</p> <p>18 A. Correct.</p> <p>19 Q. ARM was represented by a lawyer, right?</p> <p>20 in the litigation?</p> <p>21 A. Yes.</p> <p>22 Q. And News America was represented by a</p> <p>23 lawyer in the litigation?</p> <p>24 A. Yes.</p>	<p>1 Q. Do you recall in substance the reason you</p> <p>2 were deposed?</p> <p>3 MR. KATZ: Objection.</p> <p>4 A. For my knowledge of the ARM transaction</p> <p>5 and subsequent activities.</p> <p>6 Q. Which you deposed upon oath?</p> <p>7 A. Of course.</p> <p>8 Q. And you testified truthfully?</p> <p>9 A. Of course. I will volunteer that the</p> <p>10 lawyer representing me was not from ARM's side. It was</p> <p>11 from our side.</p> <p>12 Q. You said our side?</p> <p>13 A. Yes. I just don't know whether it was a</p> <p>14 Hogan & Hartson lawyer or a News America lawyer. That's</p> <p>15 my quandary.</p> <p>16 Q. I understand. They're all about the</p> <p>17 same, so it's not a problem. At the time you were</p> <p>18 deposed you were a witness for News America versus a</p> <p>19 witness for ARM; is that a fair statement?</p> <p>20 A. Yes.</p> <p>21 Q. How much money did ARM win?</p> <p>22 A. I don't know what the final pay out was.</p> <p>23 Q. Did it go all the way through trial?</p> <p>24 A. I don't know.</p>

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LELLOUCHE-5/25/07

Page 21	Page 23
<p>1 Q. Did you testify at a trial?</p> <p>2 A. I did.</p> <p>3 Q. So after the deposition you testified</p> <p>4 again at trial?</p> <p>5 A. I did.</p> <p>6 MR. KATZ: Let me add one thing. To be</p> <p>7 honest I don't know anything about this case, and what I</p> <p>8 don't know is whether there's a confidentiality order</p> <p>9 regarding a confidentiality stipulation regarding the</p> <p>10 final resolution of that. I just don't want the witness</p> <p>11 to violate what may be a confidentiality stipulation.</p> <p>12 MR. PETERS: I am not -- at the risk of</p> <p>13 sounding flip, but the record should reflect I'm not</p> <p>14 trying to be, I'm not concerned about that</p> <p>15 confidentiality's provision. In this case we have a</p> <p>16 confidentiality provision. And I think under our</p> <p>17 confidentiality stipulation you can designate portions</p> <p>18 of this transcript as confidential if you believe that</p> <p>19 it is confidential. I think you have some time after</p> <p>20 the transcript is delivered to make those designations.</p> <p>21 We would of course abide by them absent, you know, some</p> <p>22 intervention by the court. But for the purposes of the</p> <p>23 deposition I'm going to ask all the questions I can ask,</p> <p>24 and the witness should be as forthcoming as possible.</p>	<p>1 the Windy City, can you be more precise?</p> <p>2 A. My last address for him was Palatine.</p> <p>3 Q. Spell that.</p> <p>4 A. P A L A T I N E.</p> <p>5 Q. Okay, thank you. That's in the city?</p> <p>6 A. 'Burbs.</p> <p>7 Q. That's the suburb?</p> <p>8 A. Yes.</p> <p>9 Q. That's the suburb, okay. Thank you. And</p> <p>10 Mr. Scopa?</p> <p>11 A. Yes.</p> <p>12 Q. Where does Mr. Scopa live, if you know?</p> <p>13 A. In Connecticut.</p> <p>14 Q. Do you know what town?</p> <p>15 A. I don't.</p> <p>16 Q. Do you correspond with Mr. Scopa?</p> <p>17 A. No.</p> <p>18 Q. Do you maintain a professional</p> <p>19 relationship with either three of these or any of the</p> <p>20 three of these gentlemen?</p> <p>21 A. No.</p> <p>22 Q. Is it fair to say that they harbor or</p> <p>23 they have expressed to you that they harbor some</p> <p>24 hostility against you?</p>
Page 22	Page 24
<p>1 We can deal with confidentiality after the fact, I</p> <p>2 think. In fact, I know.</p> <p>3 Q. Who were the principals of ARM?</p> <p>4 A. I'm not sure I understand what principal</p> <p>5 means.</p> <p>6 Q. Who were the guys in charge?</p> <p>7 A. Norton Garfinkle was the investor. My</p> <p>8 superior was Walter Wilson, who was the president at the</p> <p>9 end. Early on though the president was John Scopa.</p> <p>10 Q. Can you spell Scopa?</p> <p>11 A. S C O P A.</p> <p>12 Q. Thank you. Are these gentlemen still in</p> <p>13 New York to the best of your knowledge?</p> <p>14 A. No.</p> <p>15 Q. Do you know where they are? Start first</p> <p>16 with Mr. Garfinkle.</p> <p>17 A. Yeah, I'm sorry, Garfinkle is in</p> <p>18 Manhattan.</p> <p>19 Q. And Mr. Wilson, do you know where he</p> <p>20 resides?</p> <p>21 A. He resides in Chicago.</p> <p>22 Q. Did you correspond with Mr. Wilson?</p> <p>23 A. Once a year maybe.</p> <p>24 Q. Do you know where he lives? Other than</p>	<p>1 MR. KATZ: Objection.</p> <p>2 A. I have no idea.</p> <p>3 Q. They have never spoken to you about the</p> <p>4 litigation after the litigation; is that true?</p> <p>5 A. Not once.</p> <p>6 Q. Were you involved in the acquisition of</p> <p>7 Consumer Card Marketing, Inc., CCMi?</p> <p>8 A. Yes.</p> <p>9 Q. What was your role in the acquisition?</p> <p>10 A. I initiated the dialogue when I met with</p> <p>11 Bob I believe at a trade show. Then I went up and made</p> <p>12 a subsequent visit to Braintree to do some early due</p> <p>13 diligence.</p> <p>14 Q. So what trade show did you meet Bob at?</p> <p>15 A. I'm not sure.</p> <p>16 Q. Do you remember when it was?</p> <p>17 A. No, I don't.</p> <p>18 Q. What was Mr. Fireman doing at the trade</p> <p>19 show?</p> <p>20 A. Exhibiting.</p> <p>21 Q. And you initiated the conversation?</p> <p>22 A. I believe so, yes.</p> <p>23 Q. Prior to going to the trade show, did you</p> <p>24 have in mind that you were going to approach CCMi about</p>

LELLOUCHE-5/25/07

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Page 25

Page 27

1 exploring an acquisition?

2 A. No.

3 Q. Was this something that occurred to you
4 just at the time?

5 MR. KATZ: Objection. You can answer.

6 A. I was working in the trade show looking
7 for opportunities as part of my role in the venture
8 group.

9 Q. What group was this and what was its job
10 responsibility?

11 A. The venture group was an entity that was
12 composed of myself, John Rubin, and Heather Harde. We
13 worked directly for the CFO of the company.

14 Q. Who is that?

15 A. David Devoe, Jr. And our job was to
16 identify opportunities, investments, acquisitions, on
17 behalf of News America.

18 Q. What about News America made it
19 interesting to you in terms of a potential acquisition?

20 MR. KATZ: Objection.

21 Q. Pardon me. Thank you. What about CCMi
22 was interesting to you and made it a company worth
23 exploring from your perspective?

24 A. We had interest in working in new

Page 26

Page 28

1 technologies and emerging technologies. It was clear to
2 us that loyalty marketing was an emerging technology,
3 marketing technology.

4 Q. Did you have a list of companies that
5 were involved in loyalty marketing at the time you
6 approached Bob Fireman at the trade show in Chicago?

7 A. I didn't have a list. I knew of some.

8 Q. You knew of CCMi prior to the show in
9 Chicago?

10 A. No.

11 Q. So it was introduced to you, the concept
12 or the company was introduced to you in Chicago?

13 A. I believe John Rubin suggested that I
14 meet with Bob. I think John Rubin had known Bob and/or
15 Ann and suggested I stop by and learn more about them.

16 Q. What other companies did you know of at
17 the time that were involved in loyalty marketing?

18 A. Of course there was Catalina Marketing
19 and there was RMS and a host of other small companies
20 that did segments of the industry be they database
21 marketing or card manufacturing or application
22 processing.

23 Q. What companies at the time that you
24 approached Bob Fireman in Chicago did card programs?

1 A. The one that Bob mentioned yesterday in

2 New Jersey was one of them. I can't remember the name
3 of them now. It was owned by the Corilus [PHONETIC]
4 family. I don't remember of name of them, but that was
5 one. By the time we got to them, I believe they were
6 well on their way with Catalina. They were absorbed by
7 Catalina.

8 Q. Card marketing programs was something you
9 thought the company should explore at the time you
10 approached Bob Fireman in Chicago?

11 A. Yes.

12 Q. Did Mr. Rubin and Ms. Harde share that
13 view?

14 A. I don't think Ms. Harde did. She was not
15 aware of this segment. I think Mr. Rubin did.

16 Q. What about Mr. Devoe, did you discuss
17 card marketing with Mr. Devoe prior to approaching Bob
18 Fireman in Chicago?

19 A. Yes.

20 Q. Can you tell me the substance of that
21 conversation?

22 A. I can't tell you anything specifically.

23 Q. Did it go sort of like this: This is
24 something we should explore and Mr. Devoe said good

1 idea?

2 MR. KATZ: Objection.

3 A. I don't know.

4 Q. Did Mr. Devoe think it was a good idea to
5 look into?

6 A. Mr. Devoe's mandate to us was to find
7 opportunities. It wasn't a narrow scope.

8 Q. But he didn't have any specific
9 understanding about the power or profitability of card
10 marketing prior to the CCMi acquisition; is that
11 correct?

12 A. I don't think he had ever heard of CCMi
13 prior to our approach.

14 Q. What about the concept of loyalty
15 marketing by using data collected from cards scanned at
16 the point of sale, is that something he knew about and
17 spoke with you about prior to acquiring CCMi?

18 MR. KATZ: Objection.

19 A. Yes.

20 Q. Is that something that you and he had a
21 conversation about?

22 A. Yes.

23 Q. More than one?

24 A. Several.

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LELLOUCHE-5/25/07

Page 29

1 Q. And limiting your response to the times
2 prior to acquiring CCMI, can you tell me what Mr. Devoe
3 said in that context?
4 A. Well, our first interest was buying
5 Catalina Marketing, and that's what spawned the entire
6 subject of loyalty and database marketing. So I think
7 that is where many of us got the education about that
8 segment was pursuant to that proposed acquisition.
9 Q. Now let's talk about the exploration of
10 acquiring Catalina. When did News America Marketing
11 first approach Catalina about acquiring them?
12 A. Approximately a year after the
13 acquisition of Act Media or Heritage Media.
14 Q. Give me a year.
15 A. Late '98, early '99.
16 Q. Who did the -- let me start a little bit
17 earlier. What about Catalina made it an attractive
18 acquisition from your perspective?
19 A. It was the next big opportunity for News
20 America Marketing.
21 Q. The next big opportunity according to
22 whom?
23 A. According to the consensus of the group,
24 the venture group.

Page 30

1 Q. So you, Mr. Rubin, and Ms. Harde all
2 agreed that card programs were the next big opportunity
3 for NAM?
4 MR. KATZ: Objection.
5 A. No.
6 Q. What's wrong about my question?
7 A. Card programs were ancillary.
8 Q. What were you interested in?
9 A. We were interesting in tapping into
10 purchase behavior data.
11 Q. Why?
12 A. Because Catalina had developed a passive
13 tap into a large number of retailers and they had direct
14 access to data which enabled them to execute very
15 powerful programs.
16 Q. How did Catalina acquire purchase
17 behavior data?
18 A. Oh, through the passive tap.
19 Q. What was the passive tap?
20 A. Literally as you would think of a tap,
21 they were listening in to every transaction in every
22 lane in every store they were installed in.
23 Q. How did they do that?
24 A. I don't know.

Page 31

1 Q. What type of information was generated,
2 digital?
3 A. Data.
4 Q. How was the data acquired, do you know?
5 A. Through the passive tap.
6 Q. Can you describe this for me?
7 A. I can't.
8 Q. Did you look into it in the context of
9 acquiring Catalina; in other words, prior to approaching
10 Catalina about possibly acquiring it, did you and your
11 group try to determine how they did what they did?
12 A. Not really.
13 Q. At any time after determining that you or
14 News America might be interested in acquiring Catalina,
15 did you do anything to try and figure out how Catalina
16 did what they did?
17 A. No.
18 Q. Do you have any understanding as you sit
19 here today as to how Catalina acquired purchase behavior
20 data at the time you were interested in acquiring the
21 company?
22 A. As I've described, through the passive
23 tap.
24 Q. But you can't tell me what the passive

Page 32

1 tap is? You can't tell me whether it's a machine, tape
2 recorder, person, video camera, do you know?
3 A. I don't know the details of that at all.
4 Q. You don't know whether or not someone was
5 there with index cards writing information down?
6 A. I'm pretty certain that wasn't the case.
7 Q. You think this was information that was
8 processed on a realtime basis by some kind of digital
9 media?
10 A. I don't know that it was realtime. I
11 presume that it's digital because they have a data
12 warehouse in Saint Petersburg where the information was
13 transported to.
14 Q. What about purchase data behavior was
15 interesting to you and your team at the time you were
16 considering acquiring Catalina?
17 A. Enable targeted marketing on a large
18 scale.
19 Q. Talk to me about targeted marketing,
20 Mr. Lellouche. What does that mean in NAM's context?
21 A. Targeting based on purchase behavior data
22 is a powerful tool that we anchor the SmartSource Direct
23 business in today.
24 Q. How do you do it?

LELLOUCHE-5/25/07

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Page 33	Page 35
<p>1 A. We submit requests for data to retailers; 2 queries, if you will, associate universal product codes 3 with them, and they send us back lists of households 4 that qualify under those query requests. 5 Q. Coupons are sent to specific houses based 6 on purchase behavior? 7 A. Coupons, samples, other information are 8 sent to those households. 9 Q. Different programs, different products 10 all tied to purchase behavior; is that correct? 11 A. Yes. 12 Q. That's something that News America was 13 interested in as early as late '98? 14 A. Yes. 15 Q. Was anyone doing it at the time, anyone 16 utilizing purchasing behavior to do targeted marketing? 17 A. Catalina Marketing. 18 Q. What about CCMi? 19 A. Just from my due diligence I found out 20 they were doing it on a very small scale. 21 Q. Now, what happened to the approach to 22 Catalina? 23 A. No approach was made. 24 Q. Was anyone from Catalina ever contacted</p>	<p>1 were trying to convince the board to pursue? 2 A. Yes. 3 Q. You believed Catalina was a worthwhile 4 company to pursue? 5 A. Yes. 6 Q. Do you recall why the board rejected your 7 suggestion to acquire Catalina? 8 A. Yes. 9 Q. Why? 10 A. They rejected it for two specific 11 reasons. One was that given our difficulty in the 12 Heritage acquisition with the justice department, they 13 felt that it was going to be rejected. Secondly, we had 14 just absorbed the former Act Media business into our 15 organization just one year earlier and that still needed 16 to be fully integrated. 17 Q. What type of marketing was Act Media 18 doing at the time? Was it the company that was still 19 doing the coupons at the point of sale? 20 A. Yes. 21 Q. And so when had Act Media been acquired? 22 A. The acquisition began in '97 and -- 23 pardon me, I'm just reflecting on time lines. It began 24 in early '97 and closed in late '97.</p>
Page 34	Page 36
<p>1 about Catalina's interest in being acquired? 2 A. Not by me. I can't speak for others. 3 Q. Do you know if others did? 4 A. I don't know. 5 Q. So what inspired your team to move on 6 from Catalina? 7 A. Move on? I'm not sure I understand. 8 Q. To greener pastures, to companies that 9 can be acquired, to CCMi ultimately? 10 MR. KATZ: Objection. 11 Q. What happened with Catalina that inspired 12 you not to pursue a potential acquisition? 13 A. Presentations were made internally to 14 News America Management, and they rejected the proposal. 15 Q. Who made the presentations? 16 A. Myself, Heather Harde, John Rubin, David 17 Devoe, Jr. 18 Q. Were these presentations in the nature of 19 PowerPoints? 20 A. PowerPoints, probably more like Excel 21 spreadsheets than PowerPoints. There may have been some 22 PowerPoints. 23 Q. Was this something that you were trying 24 to convince the board to pursue, an acquisition that you</p>	<p>1 Q. So more than a year later Act had not 2 been integrated into News America's business? 3 A. It had been integrated; but work flows, 4 sales force allocation, duplication of efforts, other 5 things that you would see happening in a large merger 6 like that were ongoing. 7 Q. How big was the Act acquisition? How 8 much did you pay for it? 9 A. I don't know. 10 Q. Was it a larger acquisition than CCMi? 11 A. Much. 12 Q. And the sales force that was to be 13 utilized to promote Act's products, was that NAM's sales 14 force? 15 A. No. 16 Q. What sales force was going to be used to 17 promote Act's products? 18 A. Act. 19 Q. Act came with its own sales force? 20 A. Yes. 21 Q. When you used the phrase sales force 22 allocation in response to one of my questions a moment 23 ago, what are you referring to? 24 A. Elimination of duplication of effort was</p>

Page 37	Page 39
<p>1 an interest of ours. If you have one organization, one</p> <p>2 sales group calling on Unilever and then another sales</p> <p>3 group following them later that day with just a</p> <p>4 different portfolio of products, it was a duplication of</p> <p>5 effort.</p> <p>6 Q. So the idea was if you have a sales rep</p> <p>7 that's at a manufacturer -- let's use the word Hershey.</p> <p>8 If you have a sales rep that is a sales rep with Hershey</p> <p>9 and does marketing to Hershey of News America programs,</p> <p>10 then it doesn't make sense to put another person in</p> <p>11 there doing the same type of work, fair statement?</p> <p>12 A. No.</p> <p>13 Q. How have I gone wrong?</p> <p>14 A. It depends on the complexity of the</p> <p>15 program. It depends on the complementary nature of the</p> <p>16 products. Even to this day we have separate sales</p> <p>17 forces calling on the same companies because of the</p> <p>18 either specific or complex nature of the product.</p> <p>19 Q. Take me through if you can, unless I'm</p> <p>20 going to keep you here for twenty minutes with a</p> <p>21 recitation, take me through News America products from</p> <p>22 simplest to most complex so I can understand how you</p> <p>23 might break down products by sales force.</p> <p>24 MR. KATZ: Objection to the</p>	<p>1 A. Yes.</p> <p>2 Q. You have shelf based ads; right?</p> <p>3 A. Yes.</p> <p>4 Q. You have shelf based promotions?</p> <p>5 A. Yes.</p> <p>6 Q. Those are both in stores; correct?</p> <p>7 A. Yes.</p> <p>8 Q. You have floor advertising?</p> <p>9 A. Yes.</p> <p>10 Q. You have merchandising services?</p> <p>11 A. Yes.</p> <p>12 Q. You have Internet couponing?</p> <p>13 A. Yes.</p> <p>14 Q. And you have SmartSource Direct database</p> <p>15 marketing?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Now, of the -- and I understand</p> <p>18 these are categories and that under each of these</p> <p>19 categories would be different products and services; is</p> <p>20 that a fair statement?</p> <p>21 A. Yes.</p> <p>22 Q. So of the seven categories that you've</p> <p>23 articulated which of those categories did CCMi fill or</p> <p>24 belong to?</p>
Page 38	Page 40
<p>1 characterization, but answer the question to the best of</p> <p>2 your ability.</p> <p>3 Q. Gordon, I think I'm going to be counseled</p> <p>4 by your objection just a little bit. How many products</p> <p>5 does News America Marketing sell, products and services,</p> <p>6 presently?</p> <p>7 A. Many. We have FSIs, freestanding inserts</p> <p>8 that are newspaper based. A subset of that, there are</p> <p>9 many flavors of those, solos, blow-ins.</p> <p>10 Q. Let's keep it in large categories. FSI</p> <p>11 is a large category?</p> <p>12 A. FSIs.</p> <p>13 Q. Okay.</p> <p>14 A. We have a host of ad shelf based</p> <p>15 advertising products. We have ad shelf based</p> <p>16 promotional products. We have floor advertising</p> <p>17 products. We have merchandising services. We have</p> <p>18 Internet couponing. We have SmartSource Direct database</p> <p>19 marketing. At the highest level I believe that's</p> <p>20 everything.</p> <p>21 Q. Let me see if I was able to get it down.</p> <p>22 You have FSIs, which is freestanding inserts?</p> <p>23 A. Yes.</p> <p>24 Q. And those are in newspapers?</p>	<p>1 A. The very last, SmartSource Direct.</p> <p>2 Q. Database marketing?</p> <p>3 A. Mm-hmm.</p> <p>4 Q. Okay. Now, how many sales forces does</p> <p>5 News America Marketing have presently?</p> <p>6 A. There's a sales force for SmartSource</p> <p>7 Direct. There is a sales force for the merchandising</p> <p>8 group. There's a sales force for what we called core,</p> <p>9 which is really the in-store and the FSI products. I</p> <p>10 would also add that there is a retail trade sales force</p> <p>11 that works with the retailers and the trade</p> <p>12 organizations to sell the above products.</p> <p>13 Q. Which of these sales forces call on</p> <p>14 manufacturers?</p> <p>15 A. All.</p> <p>16 Q. Now, the four sales forces that you just</p> <p>17 listed for me, is that how News America Marketing has</p> <p>18 been set up since 2000 or have you, for example, added</p> <p>19 or taken away sales forces?</p> <p>20 A. The retail sales force has changed, the</p> <p>21 last one that I mentioned. Initially it was two</p> <p>22 organizations. One was simply securing retail contracts</p> <p>23 for the rights to advertise in the store and there was</p> <p>24 another one that was called the co-marketing group.</p>

LELLOUCHE-5/25/07

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Page 41	Page 43
<p>1 Q. Sorry, co-marketing?</p> <p>2 A. Co-marketing group that would sell many</p> <p>3 of the core products including FSI on the local level.</p> <p>4 They were separate. They've merged.</p> <p>5 Q. In the context of the merger were</p> <p>6 redundant jobs removed?</p> <p>7 A. No.</p> <p>8 Q. Same number of salespeople?</p> <p>9 A. To my knowledge.</p> <p>10 Q. Just managed by one group versus two?</p> <p>11 A. Yes.</p> <p>12 Q. We were talking about the Catalina</p> <p>13 exploration. The board listened to you and determined</p> <p>14 that News America Marketing would not pursue the</p> <p>15 acquisition of Catalina; correct?</p> <p>16 A. News Corporation.</p> <p>17 Q. News Corporation, okay. How shortly</p> <p>18 after that decision did you begin to explore or your</p> <p>19 team to begin to explore the acquisition of CCMI?</p> <p>20 A. I can't say.</p> <p>21 Q. Okay. Was your consideration of Catalina</p> <p>22 contemporaneous with your exploration of CCMI? Were you</p> <p>23 looking at them both at the same time?</p> <p>24 A. No.</p>	<p>1 A. My role was early stage. I was really</p> <p>2 focused on another investment which was consuming most</p> <p>3 of my time. I was also involved in work on the PlanetU</p> <p>4 investment.</p> <p>5 Q. At the time you were exploring the</p> <p>6 potential acquisition of CCMI, were you also looking at</p> <p>7 acquiring other companies that you thought would be</p> <p>8 synergetic with CCMI, PlanetU being one of them?</p> <p>9 MR. KATZ: Objection.</p> <p>10 A. I was involved in the due diligence and</p> <p>11 analysis of review of Softcard Systems and PlanetU.</p> <p>12 Q. This was at the same time that the</p> <p>13 company was exploring the potential acquisition of CCMI?</p> <p>14 A. They were approximately concurrent.</p> <p>15 Q. Was there a plan to roll together</p> <p>16 PlanetU, Softcard Systems, and CCMI once all three were</p> <p>17 acquired?</p> <p>18 A. Not that I was aware of other than</p> <p>19 organizationally under the iGroup.</p> <p>20 Q. What is the iGroup?</p> <p>21 A. The iGroup is an entity within News</p> <p>22 America Marketing that was managed by, after the</p> <p>23 acquisition that was managed by Chris Mixon, who was the</p> <p>24 first president of the iGroup, and it was designed to</p>
Page 42	Page 44
<p>1 Q. Did anyone head up the team that explored</p> <p>2 the potential acquisition of CCMI?</p> <p>3 A. Well, Dave Devoe was the head of the</p> <p>4 venture group.</p> <p>5 Q. Was he involved in the day-to-day effort</p> <p>6 to determine whether or not it was a good fit?</p> <p>7 A. Only in terms of supervisory.</p> <p>8 Q. As between you, Mr. Rubin, and Ms. Harde</p> <p>9 who led the team, if anyone?</p> <p>10 A. I believe it was mostly John Rubin. I</p> <p>11 did some early work. I don't know that Heather Harde</p> <p>12 did any to my knowledge.</p> <p>13 Q. When did Ms. Harde come into the picture?</p> <p>14 A. Around the formation of the venture</p> <p>15 group, if I'm answering your question correctly.</p> <p>16 Q. You may be, but that's not the question I</p> <p>17 intended to ask. In terms of CCMI when did Ms. Harde</p> <p>18 first get involved in exploring the acquisition?</p> <p>19 A. I don't know.</p> <p>20 Q. But Mr. Rubin was more or less heading up</p> <p>21 the effort?</p> <p>22 A. Yes.</p> <p>23 Q. Did your role and his role break in any</p> <p>24 neat way you can describe for me?</p>	<p>1 roll these three investments under one umbrella.</p> <p>2 Q. What was the reason for rolling them</p> <p>3 under one umbrella; what was the business strategy, in</p> <p>4 other words?</p> <p>5 A. It was new media.</p> <p>6 Q. What's that mean in the context of what</p> <p>7 you were trying to accomplish? What is new media?</p> <p>8 A. It was not core. It was not FSI or</p> <p>9 in-store related. It was very specialized and it was</p> <p>10 evolving. At the time, this was during the Internet</p> <p>11 boom prior to its bust, there was going to be a great</p> <p>12 deal of focus dedicated to this effort, which is why</p> <p>13 they brought Mr. Mixon and Mr. Garofalo into the</p> <p>14 organization.</p> <p>15 Q. Because they had Internet expertise?</p> <p>16 A. No, they have sales and management</p> <p>17 expertise.</p> <p>18 Q. Who were the Internet marketing experts</p> <p>19 at News America Marketing at the time of the acquisition</p> <p>20 of CCMI, PlanetU, and Softcard?</p> <p>21 A. Really didn't have any.</p> <p>22 Q. The iGroup, did that name exist prior to</p> <p>23 CCMI's acquisition?</p> <p>24 A. No.</p>

Page 45

1 Q. Was it discussed with Mr. Nixon -- strike
2 the question.

3 Did you have any conversations with
4 Mr. Nixon about forming the iGroup or some entity that
5 would subsequently be named the iGroup prior to
6 acquiring CCMi?

7 A. I was not part of that discussion.

8 Q. Did you know whether or not there was one
9 under way?

10 A. I did not.

11 Q. Have you learned subsequently that prior
12 to acquiring CCMi the plan was to roll these three new
13 media companies together into the iGroup or something
14 else aptly named?

15 A. I don't know of any discussion like that.

16 Q. Okay. So the roll up or the -- I'll
17 leave it there, the roll together, the putting together
18 of CCMi, PlanetU and Softcard, that's something that
19 happened after the companies were acquired?

20 A. Well, we didn't acquire all three of
21 them. We invested in two and acquired one.

22 Q. And my question was poor in any event.
23 I'm going to ask it again in another way. The idea of
24 these three companies being put together in one group,

Page 46

1 do you know of any conversations, any documents,
2 anything at all that suggests to you that that was the
3 plan prior to News America Marketing's acquisition of
4 CCMi?

5 A. I know of no discussion of that kind.

6 Q. When did the idea of rolling these three
7 companies together first occur as best you know?

8 A. Subsequent to the investments and
9 acquisitions and at a time when the notion of the
10 venture group was not necessary anymore and that these
11 businesses needed to be managed and fleshed out.

12 Q. You mention that the venture group became
13 unneeded; my words, not yours. When did that happen and
14 why?

15 A. After the investments and acquisitions --
16 were made.

17 Q. There was no further discussion about
18 acquiring additional companies?

19 A. Not through an organized group. We look
20 at businesses week in and week out.

21 Q. What was the specific charter of the
22 venture group?

23 MR. KATZ: Objection.

24 A. I don't know, the charter?

Page 47

1 Q. In other words, what were you trying to
2 accomplish?

3 A. We were trying to, we were trying to
4 simply identify opportunities in new media, look to the
5 future.

6 Q. So it was a new media focused group?

7 A. Yes.

8 Q. How did Mr. Carlucci feel about the new
9 venture group? Did he ever speak with you about it?

10 A. No.

11 Q. Do you know if he ever expressed an
12 opinion about the ventures, venture group?

13 A. No.

14 Q. Now, you mentioned that you were focused
15 on other investments. Were those the PlanetU and
16 Softcard investments?

17 A. Yes.

18 Q. Your professional energy was
19 substantially taken up in those transactions?

20 A. No, mostly on Softcard.

21 Q. Can you describe for me the Softcard
22 investment?

23 A. Softcard Systems was an engineering firm
24 that had a large portfolio of issued and pending patents

Page 48

1 utilizing smart card technology, chip cards, for the
2 purposes of marketing solutions.

3 Q. Did you see any synergies between
4 Softcard and CCMi when you were looking into the
5 Softcard investment?

6 A. Yes.

7 Q. Can you describe those for me?

8 A. Well, card based marketing -- CCMi was
9 card based marketing. Softcard was card based
10 marketing. One involved intelligent cards. The other
11 involved simple striped magnetic cards. It was hard to
12 tell where the industry was doing. We opted to do some
13 R&D investment there.

14 Q. So you thought it might be possible that
15 cards used to acquire data for targeted marketing might
16 be smart cards versus cards with mag strips or codes?

17 A. We didn't know. We were investing on the
18 come because it was unknown what was going to happen in
19 the future, and we wanted to have our bit of experience,
20 or our toe in the water if you will, in these different
21 areas.

22 Q. But the idea was you wanted to collect
23 data at the point of sale ultimately?

24 MR. KATZ: Objection.

LELLOUCHE-5/25/07

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Page 49	Page 51
<p>1 A. Not specifically related to Softcard.</p> <p>2 Q. What's the value of a Softcard then? If</p> <p>3 not collecting purchasing trends or purchasing behavior,</p> <p>4 what value would Softcard have to News America?</p> <p>5 A. It was more utilizing data; not</p> <p>6 collecting data, leveraging data.</p> <p>7 Q. And did soft cards have any capability</p> <p>8 for utilizing or leveraging data?</p> <p>9 A. Through the intelligent cards, yes.</p> <p>10 Q. In addition to having intelligent cards,</p> <p>11 they also had applications that could analyze the data?</p> <p>12 A. Lightly, yes. Most of the heavy work had</p> <p>13 to be done separately. It wasn't their expertise.</p> <p>14 Q. Mostly they were a company that had a</p> <p>15 technology that could acquire data versus analyze it; is</p> <p>16 that correct?</p> <p>17 A. Not acquire data but utilize, the ability</p> <p>18 to hold coupons or offers or incentives on a chip card</p> <p>19 and then utilizing segmentation techniques, which was</p> <p>20 not their field, to approach one-on-one marketing.</p> <p>21 Q. So the cards wouldn't -- your conception</p> <p>22 was that the cards wouldn't simply be used to acquire</p> <p>23 data; they would also store data?</p> <p>24 A. Light, light data.</p>	<p>1 A. Can you say that one more time, I'm</p> <p>2 sorry?</p> <p>3 Q. Does News America Marketing have any</p> <p>4 equity interest in Softcard?</p> <p>5 A. Yes.</p> <p>6 Q. Are they a controlling -- do they have a</p> <p>7 controlling interest in Softcard?</p> <p>8 A. No.</p> <p>9 Q. And is Softcard Systems or their</p> <p>10 technology being used presently in any News America</p> <p>11 Marketing programs?</p> <p>12 A. No.</p> <p>13 Q. Why not?</p> <p>14 A. The performance of the products that they</p> <p>15 delivered in test did not perform to commercial</p> <p>16 expectations.</p> <p>17 Q. When was that? How long ago is a better</p> <p>18 question?</p> <p>19 A. Years, early 2000s.</p> <p>20 Q. So not long after the investment was made</p> <p>21 News America determined that the technology was not</p> <p>22 going to be commercially viable; is that a correct</p> <p>23 statement?</p> <p>24 A. I think not long is an unfair statement.</p>
Page 50	Page 52
<p>1 Q. What's that mean?</p> <p>2 A. Just that Bob is different from you is</p> <p>3 different from Gordy. It wasn't your entire purchasing</p> <p>4 history on this little chip card.</p> <p>5 Q. What happened with Softcard ultimately?</p> <p>6 Was there an investment made?</p> <p>7 A. Yes.</p> <p>8 Q. How much?</p> <p>9 A. I believe the initial was seven and a</p> <p>10 half million.</p> <p>11 Q. Was there additional money invested?</p> <p>12 A. I believe so, yes. I don't know the</p> <p>13 details though.</p> <p>14 Q. What happened with Softcard ultimately?</p> <p>15 A. They still operate.</p> <p>16 Q. Is it still a company that News America</p> <p>17 invests, News America Marketing invests in?</p> <p>18 A. We're passive investors.</p> <p>19 Q. Do you know the nature of the</p> <p>20 investments; in other words, are you getting return on</p> <p>21 your investment?</p> <p>22 A. I don't know.</p> <p>23 Q. Does News America Marketing have any</p> <p>24 stock interest in Softcard?</p>	<p>1 Q. All right, some period of time after the</p> <p>2 investment, News America determined that the technology</p> <p>3 that they invested in was not commercially viable for</p> <p>4 News America Marketing's purposes; is that true?</p> <p>5 A. Yes, after exhaustive testing.</p> <p>6 Q. And you were involved also in the PlanetU</p> <p>7 investment?</p> <p>8 A. Only tangentially in terms of due</p> <p>9 diligence and visits to their offices. The Internet</p> <p>10 really wasn't my area.</p> <p>11 Q. And PlanetU is a company that markets</p> <p>12 Internet coupons?</p> <p>13 A. They did.</p> <p>14 Q. What else did they do?</p> <p>15 A. That's all I know of.</p> <p>16 Q. What did your due diligence involve in</p> <p>17 terms of the PlanetU investment?</p> <p>18 A. Visiting their office, reviewing some</p> <p>19 processes and procedures, just getting a general feel</p> <p>20 for the management team.</p> <p>21 Q. Were you trying to determine if there</p> <p>22 were any synergies between PlanetU and CCMi in the</p> <p>23 context of conducting your due diligence on PlanetU?</p> <p>24 A. No.</p>

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LELLOUCHE-5/25/07

Page 53

1 Q. Were there any ultimately?

2 A. No.

3 Q. So there was no overlap or business

4 synergy that you could determine between PlanetU and

5 CCMI; is that correct?

6 A. No.

7 Q. I'm wrong?

8 A. There is no -- they operate as completely

9 separate businesses even to this day.

10 Q. What happened with PlanetU? Was it

11 successful?

12 A. No.

13 Q. Is it still a division -- strike that.

14 Is it a company that News America Marketing still

15 invests in?

16 A. No, we purchased the intellectual

17 property.

18 Q. How much did you purchase it for?

19 A. I don't know.

20 Q. By you, I mean News America Marketing,

21 but you don't know that either?

22 A. I don't know either.

23 Q. When was the purchase?

24 A. Very recent.

Page 54

1 Q. Was the investment in PlanetU back in

2 1999-2000?

3 A. Yes.

4 Q. So after investing in PlanetU ultimately

5 you or I should say News America Marketing acquired the

6 IP?

7 A. No.

8 Q. What happened?

9 A. It went through a series of ownerships,

10 ended up with a company called Q Interactive, also known

11 as Cool Savings, and we recently purchased the software

12 and technology for grocery printed home couponing from

13 Q Interactive, and along with that deal came the PlanetU

14 directed card functionality solution.

15 Q. Until the acquisition of the PlanetU IP

16 through Cool Savings recently, was News America

17 Marketing using the PlanetU IP in its business?

18 A. No.

19 Q. Had it ever used PlanetU's IP in

20 business?

21 A. I don't know.

22 Q. Did it do Internet coupon marketing?

23 A. I don't know that it ever got off the

24 ground.

Page 55

1 Q. So of the three entities that were

2 ultimately rolled into the iGroup being CCMI, PlanetU,

3 and Softcard, two of them never got off the ground,

4 Softcard and PlanetU; is that correct?

5 A. Off the ground?

6 Q. Off the ground enough to be revenue

7 generating?

8 A. No, they did not.

9 Q. Was the initial investment in PlanetU \$23

10 million?

11 A. I don't know.

12 MR. PETERS: Off the record.

13 (Recess taken)

14 BY MR. PETERS:

15 Q. Mr. Lellouche, when you were -- let me

16 start over again. We were talking about NAM's interest

17 in acquiring CCMI. You spoke with me briefly about

18 meeting Bob Fireman at a trade show in Chicago. What

19 was the next step in exploring acquiring CCMI?

20 A. I believe I contacted either Bob or Ann,

21 I don't recall, and asked for an invite to come in to

22 see what was going on.

23 Q. Okay.

24 A. And I did do that.

Page 56

1 Q. Did you speak with anyone about CCMI,

2 anyone on your team?

3 A. I can't recall specifically anything like

4 that.

5 Q. And when you visited CCMI did you meet

6 with both Bob and Ann?

7 A. Yes.

8 Q. Were you trying to find out about the

9 nature of the business?

10 A. Yes.

11 Q. How long did the meeting take?

12 A. I believe I was there for a day.

13 Q. And at that time did you find out that

14 CCMI was in the business of doing loyalty marketing?

15 A. I did.

16 Q. Did you come away with the view that they

17 were one of the pioneers in loyalty marketing?

18 A. I wouldn't say pioneers, no.

19 Q. Do you believe they were one of the

20 pioneers in loyalty marketing?

21 A. Pioneer is a strange word. I believe

22 that they worked in it for a fairly long period of time.

23 Q. By pioneers, I mean those that break

24 ground. Were they one of the ground breakers in loyalty

LELLOUCHE-5/25/07

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Page 57

Page 59

1 marketing using information collected at the point of
2 sale?

3 A. No.

4 Q. You think there were others that broke
5 that ground before them?

6 A. Certainly.

7 Q. Catalina?

8 A. Without a doubt.

9 Q. Who else?

10 A. Catalina was the behemoth. They
11 overshadowed everyone else.

12 Q. Doing the same type of work that CCMi was
13 doing?

14 A. I don't know they were doing all the same
15 kind of work they were doing, but in terms of collecting
16 data and using that data for the purposes of remarketing
17 it back to consumers, they were well in advance of CCMi.

18 Q. What did you learn about CCMi's business
19 that day?

20 A. I learned the different segments in which
21 they operated. I had the opportunity to visit their
22 facility. I had the opportunity to observe a
23 presentation that I believe Ann made on their
24 capabilities. I think that's the extent of it at that

1 meetings, but it was not my deal. It was not my due
2 diligence responsibility.

3 Q. It was really John Rubin's?

4 A. Yes.

5 Q. So the information that you're giving to
6 me now really is information you learned in the early
7 part of exploring the potential acquisition?

8 A. Right now, yes.

9 Q. And I'm limiting it to you now, what you
10 knew before acquiring the company.

11 A. Yes.

12 Q. My questions will be directed to that
13 level of knowledge whether it's information determined
14 at this meeting or subsequently. Did you learn that
15 CCMi had met with virtually every supermarket chain in
16 the country all over the country?

17 A. No, I did not know that they met with
18 every supermarket chain across the country, which is a
19 pretty tall order. I knew that they had met and had
20 relationships with a number of retailers. We shared
21 names, just identified different key contacts at
22 different key chains.

23 Q. When I say every supermarket chain, of
24 course there are many, many, many, but the largest

Page 58

Page 60

1 point.

2 Q. What did you believe prior to acquiring
3 CCMi were CCMi's core competencies?

4 A. I believe the core competencies were in
5 the retailer side of the business which is relating to
6 card marketing, card production, application processing,
7 some very modest data hosting, and expertise and
8 understanding of the marketplace.

9 Q. What about the marketplace made them
10 experts; their knowledge, that is?

11 A. Through the presentation I came to
12 understand that they had launched several loyalty
13 programs and that they had ongoing relationships with
14 several retailers, several name plate retailers. They
15 had launched the Lucky program in California, but it
16 was -- most of this was new to me, so I was listening
17 more than commenting.

18 Q. I don't want to necessarily limit you to
19 this one meeting, although I have so far. Let me ~~ask~~
20 you this. How many meetings did you have to acquire
21 information about CCMi prior to acquiring it?

22 A. I couldn't tell you. As I said, I really
23 passed it on to John Rubin and I exited the process to
24 my recollection. I may have had some, a few more

1 supermarket chains in the country, do you know whether
2 or not Bob Fireman and Ann Raider had met with them to
3 discuss what they had to offer prior to the time that
4 CCMi was acquired by NAM?

5 A. I think they had met with a number of
6 them.

7 Q. And did you talk with Bob and Ann about
8 which grocery store chains those were?

9 A. I'm sure I did.

10 Q. Same question with respect to drug
11 stores, all the major drug stores Ann and Bob met with,
12 did you know that?

13 A. My specific recollection is focused on
14 Duane Reade and the NACDS, National Association of Chain
15 Drug Stores. Beyond that I don't recall any other
16 specific drug chain meetings.

17 Q. And did you do any work to try to figure
18 out where the market was going for the types of services
19 that News America, I should say CCMi, provided?

20 A. We were relying on CCMi's vision and
21 expertise to give us an idea of where the marketplace
22 was going.

23 Q. This is prior to the acquisition?

24 A. Yes.

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LELLOUCHE-5/25/07

Page 61

Page 63

1 Q. Did your due diligence in acquiring
2 Catalina provide you with any insights in that regard?
3 MR. KATZ: Objection.
4 A. In what regard?
5 Q. Well, before looking to acquire CCMI, you
6 looked into acquiring or investing in Catalina; correct?
7 A. Correct.
8 Q. Your testimony, they were the behemoth in
9 this business?
10 A. Yes.
11 Q. Prior to deciding whether or not this was
12 a good idea of pitching to the board of News America
13 that it was a good idea, did you do any due diligence
14 where Catalina's market was going?
15 A. We did a lot of due diligence on the
16 Catalina investment or proposed investment and its
17 direction.
18 Q. Right, and is that the same market
19 ultimately that you expected CCMI to fill?
20 A. No.
21 Q. How was it different?
22 A. Well, Catalina had patents. Catalina had
23 hardware installed. Catalina had integrated into the
24 point of sale system. What they were able to accomplish

Page 62

1 was beyond the reach of CCMI.
2 Q. In the final analysis both companies were
3 involved in loyalty marketing; correct?
4 A. Correct.
5 Q. And the market for loyalty marketing
6 programs whether it's to Catalina or to CCMI is the same
7 market, isn't it?
8 A. Would you say that one more time, please?
9 Q. Sure. They were catering to the same
10 market, CCMI and Catalina?
11 MR. KATZ: Objection.
12 A. I don't think so.
13 Q. How was CCMI marketing to a different
14 segment of the loyalty marketing, loyalty program
15 market?
16 A. CCMI's business was heavily focused on
17 card manufacturing, on application processing, and those
18 areas. For Catalina that was an afterthought. They
19 were basically driving promotions through the point of
20 sale. They were really more in the business of purchase
21 behavior data utilization than loyalty marketing. To
22 compare the two is, it's not -- it's really not
23 comparable.
24 Q. Well, when you spoke with Bob Fireman

1 about his vision for CCMI, didn't he tell you that the
2 future was in substance going to be in loyalty marketing
3 using information generated at the point of sale?
4 A. Yes.
5 Q. And that's what Catalina did?
6 A. Yes.
7 Q. So you expected the direction of CCMI to
8 be the direction that Catalina was already going in,
9 loyalty marketing based on point of sale data; correct?
10 A. Loyalty marketing based on point of sale
11 data, correct.
12 Q. Therefore, when you were exploring the
13 possibility of acquiring Catalina, when you were
14 developing enough information to allow you to tell the
15 board of directors of News America it was a good
16 investment, you had already done some work to determine
17 what the market was for that type of service, hadn't
18 you?
19 A. We had done extensive work to determine
20 the potential of Catalina.
21 Q. So when you say you were relying
22 exclusively on CCMI's vision and expertise, that's not
23 really true, is it? You were also relying on what you
24 learned when you explored Catalina?

Page 64

1 MR. KATZ: Objection.
2 A. That's not true. Catalina's business,
3 their metrics were evaluated based on number of stores
4 they could install, number of salespeople they could
5 have in place, number of coupons they could push through
6 their printers at the checkout. Their business model
7 was completely different.
8 Q. But their market was the same ultimately;
9 that is, loyalty marketing relying on customer data
10 acquired at the point of sale; correct?
11 A. That was the -- the focus of the business
12 was on purchase behavior data.
13 Q. Right, and so too was the future of CCMI;
14 right?
15 A. Yes.
16 Q. Did you learn that Coca-Cola had done a
17 study validating consumer relationship marketing; that
18 that was the next great thing? Did you ever see that
19 study?
20 A. I never saw the study. I'm vaguely
21 familiar with it.
22 Q. Did you see any studies in the context of
23 either acquiring CCMI or exploring the acquisition of
24 Catalina that gave you some confidence that loyalty

LELLOUCHE-5/25/07

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Page 65	Page 67
<p>1 marketing based on data collected at the point of sale</p> <p>2 was where your market was going to ultimately go?</p> <p>3 A. My market?</p> <p>4 Q. The market you were hoping to get into by</p> <p>5 acquiring CCMI.</p> <p>6 A. I believe that the marketplace for</p> <p>7 purchase behavior data had great promise.</p> <p>8 Q. Did you see any studies or other</p> <p>9 documents from third parties that facilitated that</p> <p>10 confidence, that gave you additional confidence?</p> <p>11 A. At the time?</p> <p>12 Q. Prior to acquiring CCMI?</p> <p>13 A. I can't recall.</p> <p>14 Q. Have you seen any since?</p> <p>15 MR. KATZ: At any time since 1999?</p> <p>16 MR. PETERS: Yes, sir.</p> <p>17 A. I've seen documents and reports that just</p> <p>18 show that the penetration of loyalty cards in consumers'</p> <p>19 hands has grown. I've seen documentation that shows</p> <p>20 that the percentage of information collected on loyalty</p> <p>21 cards as a percentage of total transaction has grown.</p> <p>22 Q. Do you know how big the market is</p> <p>23 presently?</p> <p>24 MR. KATZ: Objection. Market for what?</p>	<p>1 devolving into speculation?</p> <p>2 A. Well, the direct mail business, which is</p> <p>3 really the only segment that we have opted to work in,</p> <p>4 is approximately today, without postage, something in</p> <p>5 the neighborhood of \$35 million, maybe \$40 million in</p> <p>6 total, total industry.</p> <p>7 Q. How much of that market does News America</p> <p>8 have?</p> <p>9 A. This year we'll do eight million.</p> <p>10 Q. Are there other programs that News</p> <p>11 America explored using data collected at the point of</p> <p>12 sale other than direct mail that you know of?</p> <p>13 A. Yes.</p> <p>14 Q. Can you articulate them, list them?</p> <p>15 A. We looked at other contact points,</p> <p>16 certainly we looked to see whether kiosks, entrance</p> <p>17 kiosks were going to be a viable opportunity, but they</p> <p>18 are, they are and they continue to show to be failures,</p> <p>19 over and over again. Then of course there was the soft</p> <p>20 card technology where we were going to literally target</p> <p>21 at the shelf utilizing the information on the chip</p> <p>22 cards. Of course the Internet at some point with the</p> <p>23 PlanetU technology linked into the purchase behavior</p> <p>24 data was another way of doing that, but that was really</p>
Page 66	Page 68
<p>1 Q. Loyalty marketing programs in which money</p> <p>2 is generated in loyalty marketing these days using</p> <p>3 information collected at the point of sale?</p> <p>4 MR. KATZ: Objection. By what category</p> <p>5 of seller?</p> <p>6 A. Are you talking about direct mail or are</p> <p>7 you talking about point of sale?</p> <p>8 Q. I'm talking about all programming done by</p> <p>9 using information collected at the point of sale whether</p> <p>10 it be targeted marketing, programming, or otherwise; is</p> <p>11 there any study that you've seen that shows the size of</p> <p>12 that collective marketing?</p> <p>13 MR. KATZ: Objection.</p> <p>14 A. I haven't seen any study like that.</p> <p>15 Q. Is it fair to say that the market for</p> <p>16 loyalty marketing programs is significantly bigger than</p> <p>17 it was in 1999?</p> <p>18 A. Yes.</p> <p>19 Q. One hundred times bigger?</p> <p>20 MR. KATZ: Objection.</p> <p>21 A. No.</p> <p>22 Q. Less than one hundred?</p> <p>23 A. Substantially less.</p> <p>24 Q. Can you put a number on it without</p>	<p>1 unrelated to CCMI. They were not necessary to that</p> <p>2 solution.</p> <p>3 Q. You listed three things in addition to</p> <p>4 direct mail that are the only sources of revenue that</p> <p>5 News America explored to generate revenue from</p> <p>6 information collected at the point of sale?</p> <p>7 A. That I recall right now.</p> <p>8 Q. We'll get into stored value later on in</p> <p>9 the deposition, but is that also something that News</p> <p>10 America looked into, generating income by stored value?</p> <p>11 A. Stored value is separate from the</p> <p>12 purchase behavior database marketing solution. It can</p> <p>13 be used as a reward and integrated into it. But even to</p> <p>14 this day we operate the Long's gift card program, and</p> <p>15 they don't have a loyalty program. So they are not</p> <p>16 dependent on each other by any means.</p> <p>17 Q. My question is a little narrower than</p> <p>18 that. I'm making sure that I understand that in</p> <p>19 addition to these four potential sources of revenue</p> <p>20 generation using cards --</p> <p>21 A. Oh.</p> <p>22 Q. -- using card, card programs, that</p> <p>23 another way to generate revenue that News America has</p> <p>24 explored and used is stored value?</p>

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LELLOUCHE-5/25/07

Page 69

Page 71

1 A. You're going to have to give me that one
2 more time.
3 MR. KATZ: Try it again.
4 Q. I will. Does News America make money
5 using stored value cards?
6 A. Yes.
7 Q. Okay. That's all I need to know. I'll
8 move on from there. Did you try to determine how much
9 market share CCMI had in card programs prior to
10 acquiring CCMI?
11 MR. KATZ: Can you run this by me again?
12 Do you understand the question?
13 THE WITNESS: I don't understand the
14 question.
15 MR. PETERS: I'll withdraw it. That's
16 the objection, sustained.
17 Q. CCMI generated revenue by providing card
18 programs to grocery stores, drug stores, and other
19 companies; correct?
20 A. Correct.
21 Q. And CCMI was not the only company doing
22 that at that time; is that right?
23 A. Correct.
24 Q. So that's the market I'm interested in.

Page 70

1 A. Okay.
2 Q. Did you try to determine how much of that
3 market CCMI had, existing market CCMI had serviced prior
4 to the acquisition?
5 A. Only through review of their financial
6 statements did we have any understanding of what they
7 were doing currently. It was really more -- they didn't
8 really have very much.
9 Q. I'm more interested in the overall market
10 and their percentage of the market. Did you try to
11 determine the size of the overall market, existing
12 market, prior to acquiring CCMI?
13 A. We believed that there was a big upside
14 in terms of the retailers that had not yet deployed card
15 marketing, and we believed that we had an opportunity to
16 bid on those programs; in other words, card marketing
17 was still very much a niche and it was not a nationwide
18 phenomenon.
19 Q. That's something you thought there was
20 substantial growth in?
21 A. Yes.
22 Q. Of those retailers that had card
23 marketing or had gone to card marketing, did you try to
24 determine what size of the market, what the size of the

1 existing market was?
2 A. My recollection of it is that it was
3 nominal.
4 Q. Of that nominal market do you know what
5 percentage of the market CCMI had developed?
6 A. I don't know the answer to that question.
7 Q. Did Bob Fireman or Ann Raider try to give
8 you an order of magnitude; in other words, did they say
9 to you in the context of your conversations with them,
10 We have developed more than a third of this market
11 already?
12 A. I don't recall any conversation like
13 that.
14 Q. I think you may have answered this, but
15 prior to acquiring CCMI, News America Marketing had no
16 one in-house with expertise in card programs; correct?
17 A. Correct.
18 Q. It had no expertise in targeted
19 marketing; correct?
20 A. Depends on your definition of targeted
21 marketing.
22 Q. Using information generated at the point
23 of sale to analyze purchasing behavior and market
24 specifically to consumers?

Page 72

1 A. We did not have expertise in that area.
2 Q. Did CCMI?
3 A. Yes.
4 Q. Did News America Marketing have any
5 expertise in loyalty programs?
6 A. No.
7 Q. Did CCMI have those expertise?
8 A. Yes.
9 Q. Did News America Marketing have any
10 expertise in stored value programs prior to the CCMI
11 acquisition?
12 A. No.
13 Q. Did CCMI?
14 A. Prior to the acquisition?
15 Q. Yes, sir.
16 A. I don't recall any stored value programs
17 that they operated prior to the acquisition.
18 Q. Did you discuss the concept of stored
19 value with Bob Fireman prior to the acquisition?
20 A. I can't remember anymore now.
21 Q. Do you remember any discussions among
22 your team prior to the acquisition about the possibility
23 of generating revenue using stored value cards?
24 A. Yes.

LELLOUCHE-5/25/07

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Page 73

Page 75

1 Q. And was that in the context of the
2 acquisition of CCMi?
3 A. I don't think so.
4 Q. What do you recall about it in a general
5 way?
6 A. I don't recall -- I recall it as much
7 more of a post-acquisition discussion when stored value
8 gift cards, whatever you want to call them, started to
9 really hit the radar screen.
10 Q. I think you've testified that as between
11 CCMi and News America, CCMi had the expertise in
12 targeted marketing and loyalty programs; right?
13 A. Yes.
14 Q. Do you think it made good business sense
15 to allow CCMi to use that business expertise once NAM
16 acquired CCMi?
17 A. Yes.
18 Q. Do you think NAM was obliged to allow
19 CCMi to use that expertise in order to develop the
20 business?
21 MR. KATZ: Objection.
22 A. I don't know what obliged means.
23 Q. From a business standpoint do you think
24 they had an obligation to use CCMi expertise to help

1 A. An obligation to listen?
2 MR. KATZ: Do you understand the
3 question?
4 THE WITNESS: I really don't.
5 Q. You don't understand my question. Do you
6 think News America Marketing had an obligation to listen
7 to Ann Raider and Bob Fireman in areas where they had
8 expertise and News America did not? That's my question.
9 If you don't understand it, I won't ask it again.
10 MR. KATZ: Objection. It sounds like
11 you're asking --
12 MR. PETERS: Don't coach, please. I have
13 a question, and if he says I can't answer it, my
14 commitment to you, Gordon, is I'm going to move on.
15 MR. KATZ: And my objection is duly
16 noted.
17 (Record read)
18 A. I don't understand the question.
19 Q. Okay. I'll move on like I said I would.
20 Prior to the purchase of CCMi, was it NAM's goal to grow
21 CCMi's business?
22 A. Of course.
23 Q. Do you think NAM had an obligation to act
24 in good faith to accomplish that goal?

Page 74

Page 76

1 drive sales?
2 MR. KATZ: Objection.
3 A. I believe they relied on them to drive
4 sales.
5 Q. Do you believe that it made business
6 sense to allow CCMi to use its expertise in directing
7 the business?
8 A. I'm not sure if direct -- you're going to
9 have to define directing the business for me. That
10 means a lot of different things to me.
11 Q. Determining what direction the business
12 should go in given its expertise versus NAM's expertise?
13 MR. KATZ: Objection.
14 A. I believe that CCMi's obligation was to
15 recommend and advocate directions to go in and seek
16 consent of management.
17 Q. Do you think News America Marketing had
18 an obligation to listen to those recommendations and to
19 listen to Bob and Ann advocate for certain positions?
20 MR. KATZ: Objection.
21 A. I believe that they listened.
22 Q. Do you believe they had an obligation to
23 listen?
24 MR. KATZ: Objection.

1 MR. KATZ: Objection.
2 A. Again with the obligation, I don't really
3 understand how that -- I don't understand the legal
4 meaning of it. I don't understand what that means.
5 Q. You don't understand what obligation
6 means?
7 A. Not, not in, not in this sense.
8 Q. Do you have your own definition?
9 A. Of obligation?
10 Q. Right.
11 A. Being obliged, it sounds like it's
12 mandated to me.
13 Q. So is that what your definition of
14 obliged or obligation would be, a mandate?
15 A. When you say that that's what I think.
16 Q. So I want you to use that definition.
17 A. I think the answer is no.
18 Q. So let me ask the question again just to
19 make sure I understand your answer in the context of our
20 definition, or your definition I should say. Do you
21 think News America Marketing had an obligation to act in
22 good faith to accomplish the goal of growing CCMi's
23 business?
24 MR. KATZ: Objection.

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LELLOUCHE-5/25/07

Page 77	Page 79
<p>1 A. I think News America had the obligation 2 to profitably grow CCMI's business where it saw fit. 3 Q. My question is different. My question 4 is, do you think that News America Marketing had an 5 obligation to act in good faith to accomplish the goal 6 of growing CCMI's business? 7 A. I think they -- 8 MR. KATZ: Objection. 9 Q. Can you answer the question yes or no? 10 A. Say it again so I can make sure I'm 11 clear. 12 Q. Do you think News America Marketing had 13 an obligation to act in good faith to accomplish the 14 goal of growing CCMI's business? 15 A. Yes. 16 Q. Do you think News -- 17 MR. KATZ: Note the objection. 18 Q. Do you think News America Marketing had 19 an obligation to make rational business decisions? 20 A. Yes. 21 Q. Do you believe that News America 22 Marketing had an obligation to be fair to Ann Raider and 23 Bob Fireman? 24 MR. KATZ: Objection.</p>	<p>1 earn their earn out? 2 MR. KATZ: Objection. 3 A. Say that to me one more time. 4 Q. Yes, sir. Do you believe that News 5 America Marketing had an obligation to act in good faith 6 to help Ann Raider and Bob Fireman maximize their 7 potential to earn the earn out in the stock purchase 8 agreement? 9 MR. KATZ: Objection. Don't speculate. 10 A. I don't know. 11 MR. PETERS: You were so good until the 12 very last question, I'll let it go. 13 Q. Did you ever see any memoranda that 14 described the value CCMI could have to News America 15 Marketing prior to the acquisition? 16 A. I saw marketing plans. I saw business 17 plans I should say. 18 Q. Who generated the business plans? 19 A. CCMI. 20 Q. Can you describe them for me? 21 A. They were profit and loss statements 22 going out into the future. They were delineated by 23 product line and assumptions associated with them. 24 Q. Did your team discuss the business plans?</p>
Page 78	Page 80
<p>1 A. No. 2 Q. Do you believe that News America 3 Marketing invariably acted in good faith toward Ann 4 Raider and Bob Fireman? 5 A. Absolutely. 6 Q. Do you believe that all of the decisions 7 News America Marketing made regarding CCMI's business 8 had business justifications? 9 A. To the best of the knowledge at the time. 10 Q. So the answer is yes? 11 A. Yes. 12 Q. Do you believe News America Marketing had 13 an obligation to try in good faith to increase CCMI's 14 revenue? 15 MR. KATZ: Objection. 16 A. No. 17 Q. Do you believe that News America 18 Marketing was obliged to provide support to CCMI? 19 MR. KATZ: Objection. 20 A. Support commensurate with the performance 21 of the business. 22 Q. Do you believe that News America 23 Marketing had an obligation to act in good faith to help 24 Ann Raider and Bob Fireman maximize their potential to</p>	<p>1 A. We did. 2 Q. Do you recall in substance what your team 3 said regarding business plans of CCMI? 4 A. I don't recall. 5 Q. Did your team discuss the business plans 6 with CCMI? 7 A. I don't know. 8 Q. Do you remember any discussions at all 9 about the business plans? In other words, you testified 10 you saw them. Do you remember any dialogue at all about 11 them? 12 A. I remember dialogue about the opportunity 13 for magazines. I remember the discussion about moving 14 into different trade classes. I remember certainly the 15 data hosting opportunity, discussions about that. So 16 yes, I do remember talking about those elements. 17 Q. The business plans listed projected 18 revenue; is that correct? 19 A. Yes. 20 Q. And was that information important to 21 your team in determining whether or not to recommend the 22 acquisition? 23 A. Yes. 24 Q. By the way, am I correct that that really</p>

LELLOUCHE-5/25/07

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Page 81	Page 83
<p>1 was your mandate to try to determine good acquisitions?</p> <p>2 A. Yes.</p> <p>3 Q. You were not making the decision on</p> <p>4 whether or not to acquire a company; you were in the</p> <p>5 role of recommender?</p> <p>6 A. Correct.</p> <p>7 Q. And I take it you looked at companies and</p> <p>8 looked at companies' business plans and financials and</p> <p>9 determined that they were bad investments?</p> <p>10 MR. KATZ: Could I have that question --</p> <p>11 A. Yes.</p> <p>12 MR. PETERS: I'll rephrase it or ask it</p> <p>13 again so you have it for your notes. I asked him</p> <p>14 whether or not they looked at other companies' business</p> <p>15 plans and financial records and came to the conclusion</p> <p>16 that they were not a recommended acquisition, or a bad</p> <p>17 investment, and the answer to that question is yes;</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. There were how many of these companies</p> <p>21 where you vetted them and determined they were bad</p> <p>22 investments?</p> <p>23 A. I couldn't say how many.</p> <p>24 Q. A number?</p>	<p>1 A. Almost in every case we would make a</p> <p>2 recommendation to move forward or to not move forward.</p> <p>3 Q. And you'd make that in a presentation to</p> <p>4 the board?</p> <p>5 A. Some of them weren't even worthy of it.</p> <p>6 Some of them were just a note.</p> <p>7 Q. And were there always documents generated</p> <p>8 of your opinion on the matter?</p> <p>9 A. Not always.</p> <p>10 Q. It wasn't uncommon?</p> <p>11 A. It depended on who brought us the deal.</p> <p>12 It depended on the size of the deal versus the strategic</p> <p>13 fit.</p> <p>14 Q. My last series of questions are really</p> <p>15 targeted at this question: You had expertise on reading</p> <p>16 financial records; correct?</p> <p>17 A. Yes.</p> <p>18 Q. And you had expertise on looking at</p> <p>19 business plans; correct?</p> <p>20 A. Yes.</p> <p>21 Q. And you had expertise on determining</p> <p>22 whether or not a business plan was a viable business</p> <p>23 plan from your perspective and opinion?</p> <p>24 A. Viable is a big word. I couldn't say</p>
Page 82	Page 84
<p>1 A. A number.</p> <p>2 Q. Right. Kissing a lot of frogs; right?</p> <p>3 MR. KATZ: Objection.</p> <p>4 Q. Frogs.</p> <p>5 A. Is that a legal term?</p> <p>6 Q. As a matter of fact it is.</p> <p>7 A. We met with many inventors. We met with</p> <p>8 many people who had various stages of realistic notions</p> <p>9 to business and many different meetings.</p> <p>10 Q. In the context of these meetings one of</p> <p>11 your goals was to determine whether or not they were</p> <p>12 financially viable businesses; correct?</p> <p>13 A. Among other evaluation points.</p> <p>14 Q. And you looked at their financials?</p> <p>15 A. As much as they had them.</p> <p>16 Q. Right, and you looked at business plans</p> <p>17 if they had them as well?</p> <p>18 A. Yes.</p> <p>19 Q. And you tried to determine whether or not</p> <p>20 the plans were viable?</p> <p>21 A. Yes.</p> <p>22 Q. And based on those analyses you either</p> <p>23 made a recommendation to acquire or never made a</p> <p>24 recommendation at all?</p>	<p>1 that that was the base case.</p> <p>2 Q. But the only acquisitions you ever</p> <p>3 recommended were viable acquisitions; correct?</p> <p>4 MR. KATZ: Objection.</p> <p>5 A. Obviously not.</p> <p>6 Q. Well, sometimes they prove not to be;</p> <p>7 like Softcard, for example, proved not to be a viable</p> <p>8 acquisition, but you believed when you made the</p> <p>9 recommendation it was right?</p> <p>10 A. I believe that the foundation for</p> <p>11 production of the financial statements and the business</p> <p>12 plans, the assumptions, the calculations, the sizing of</p> <p>13 the marketplace, basic fundamentals were what I was</p> <p>14 looking at. Because in many cases, such as with CCMI,</p> <p>15 we were going on good faith that we were being presented</p> <p>16 with a valid, legitimate, and plausible outcome.</p> <p>17 Q. And you undertook that analysis in terms</p> <p>18 of CCMI's business plan?</p> <p>19 A. I did not.</p> <p>20 Q. Who did?</p> <p>21 A. John Rubin.</p> <p>22 Q. Were you involved at all in the process</p> <p>23 of looking at the business plan?</p> <p>24 A. As I said before, early on I saw</p>

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LELLOUCHE-5/25/07

Page 85

Page 87

1 documents, but it was not my deal.
 2 Q. Did you and John and Heather Harde round
 3 table different companies to share views, concerns,
 4 questions?
 5 A. We spoke frequently.
 6 Q. In other words, you really acted as a
 7 team, didn't you?
 8 A. We did.
 9 MR. KATZ: Objection.
 10 Q. And although John Rubin was the lead on
 11 this acquisition, he relied on your insight, on your
 12 expertise, on your experience in helping him understand
 13 that this was a good acquisition; isn't that a fair
 14 statement?
 15 A. Relied on me is not a good statement. I
 16 was a contributor.
 17 Q. Used you as a sounding board?
 18 A. I was more involved in terms of
 19 discussions and I was involved in presentations to
 20 senior management relative to CCMI.
 21 Q. So let's talk about those senior
 22 management presentations. To whom was the opportunity
 23 to acquire CCMI presented?
 24 A. Well, it certainly was presented to the

1 yes.
 2 Q. These high level materials, were they
 3 Excel spreadsheets?
 4 A. I doubt it.
 5 Q. Were they PowerPoints?
 6 A. Yes.
 7 Q. Who prepared them?
 8 A. The venture group.
 9 Q. One of you three; by you three, I mean
 10 Rubin, Harde --
 11 A. Yes.
 12 Q. -- Lellouche?
 13 A. Yes.
 14 Q. Did you have administrative support?
 15 A. I can't recall.
 16 Q. Do you know who presented the PowerPoints
 17 that were used to describe the opportunity to News
 18 America Marketing?
 19 A. I can't recall that either.
 20 Q. Okay.
 21 A. It was more than one meeting. It was a
 22 continuum.
 23 Q. I take it you don't have a copy on your
 24 laptop or otherwise?

Page 86

Page 88

1 News America Marketing management and then on either one
 2 or more occasions I flew to California to present to
 3 Mr. Chernin and Locklin Murdoch, in New York to Dave
 4 Devoe, Sr. I think that's the extent of it.
 5 Q. You presented both to News America
 6 Marketing and to News Corporation?
 7 A. Correct.
 8 Q. And by you, I mean your team?
 9 A. Correct.
 10 Q. And these presentations, did they involve
 11 documents?
 12 A. Yes.
 13 Q. Can you describe the documents that were
 14 used to present the opportunity to News America
 15 Marketing?
 16 A. Very high level documents talking about
 17 the business of Softcard, the business of CCMI, the
 18 business of PlanetU.
 19 Q. Why were all three of these companies
 20 being vetted to News America Marketing simultaneously?
 21 A. They were the three recommendations we
 22 were making for moving forward.
 23 Q. They were independent recommendations?
 24 A. They were independent recommendations,

1 A. I may have a copy of it.
 2 Q. On a laptop or hard drive or --
 3 A. If I didn't produce it, then that is my
 4 error.
 5 Q. Okay. Let's just digress briefly. Where
 6 do you have documents that describe this transaction?
 7 A. I have one deck that I'm specifically
 8 recalling now called Venture Group Update, which I
 9 thought that I produced, but I can't be certain.
 10 Q. When you say deck, what's that?
 11 A. A PowerPoint deck.
 12 Q. Oh, thank you. Venture Group Update,
 13 PowerPoint deck, okay. So sometime just after Memorial
 14 Day would you look, maybe even on the weekend --
 15 A. Oh, absolutely.
 16 Q. -- and just send it off to Gordy so he
 17 can take a look at it and get it to me?
 18 A. Sure.
 19 Q. Was this PowerPoint deck also used to
 20 present the opportunity to News America?
 21 A. Maybe.
 22 Q. Were there other documents used to
 23 describe the opportunity to News America?
 24 A. Possibly in that same Venture Group

LELLOUCHE-5/25/07

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Page 89	Page 91
<p>1 Update, which is in that same deck, that same set of</p> <p>2 documents which I can, which I will provide.</p> <p>3 Q. Okay. Did you discuss in these</p> <p>4 presentations to senior management of either entity</p> <p>5 CCMi's business plan?</p> <p>6 A. In broad terms, yes.</p> <p>7 Q. And did you tell senior management that</p> <p>8 this was a business plan that you believe should be</p> <p>9 supported?</p> <p>10 MR. KATZ: Objection.</p> <p>11 A. Yes.</p> <p>12 Q. And did senior management respond to your</p> <p>13 recommendation that the business plan be supported by</p> <p>14 agreeing with your recommendation?</p> <p>15 MR. KATZ: Objection.</p> <p>16 A. Again, you're getting into a field that</p> <p>17 was more John Rubin's than me.</p> <p>18 Q. Well, what's your memory?</p> <p>19 MR. KATZ: well, hold on. Stop for a</p> <p>20 minute. Why don't we have the question phrased again</p> <p>21 and then what is your memory of whatever the particular</p> <p>22 subject matter of the question is.</p> <p>23 Q. I can do that, but let me ask you,</p> <p>24 Mr. Lellouche, have I succeeded already in confusing</p>	<p>1 you're not shown as a copy on this memoranda and</p> <p>2 attached materials, but I'd like you to take a look at</p> <p>3 it long enough to tell me whether or not you recall</p> <p>4 seeing the document or any part of the document before I</p> <p>5 just handed it to you a moment ago?</p> <p>6 A. I have not seen this document.</p> <p>7 Q. Okay. Let me just get some context for</p> <p>8 the record. The document starts, quote, News America</p> <p>9 Marketing has reached a verbal agreement to acquire</p> <p>10 CCMi, a company specializing in database marketing and</p> <p>11 providing customer loyalty programs for retail chains</p> <p>12 through the frequent shopper programs.</p> <p>13 Is that sentence ostensibly written by</p> <p>14 David Devoe, the author of the document, is that</p> <p>15 something you agree with; in other words, the</p> <p>16 description of CCMi?</p> <p>17 A. Yes.</p> <p>18 Q. If you take a look at the third page,</p> <p>19 NAM 1476, you'll see projected results listing a total</p> <p>20 revenue for year five at \$32,220,000, see that?</p> <p>21 A. I do.</p> <p>22 Q. Do any of these numbers look familiar to</p> <p>23 you, ring a bell at all, in the context of your work and</p> <p>24 due diligence?</p>
Page 90	Page 92
<p>1 you?</p> <p>2 A. Yes.</p> <p>3 Q. All right, then I'll start again. It's</p> <p>4 easier to confuse Mr. Katz typically. For our cold</p> <p>5 record, that's a joke.</p> <p>6 You testified that your team told senior</p> <p>7 management that CCMi's business plan should be</p> <p>8 supported. My question to you, sir, was did senior</p> <p>9 management respond in substance that they agreed with</p> <p>10 your recommendation. You told me that's John Rubin's</p> <p>11 bag. My question to you is, what do you remember?</p> <p>12 A. My recollection is that in this one</p> <p>13 senior management presentation, the PowerPoint deck, the</p> <p>14 Venture Group Update was accepted, but it was not a</p> <p>15 technical document. Beyond that it was really out of my</p> <p>16 area.</p> <p>17 Q. Okay.</p> <p>18 (Marked Exhibit 1; Memorandum, 5/14/99)</p> <p>19 MR. KATZ: Off the record.</p> <p>20 (Discussion held off the record)</p> <p>21 BY MR. PETERS:</p> <p>22 Q. Mr. Lellouche, I'm showing you a</p> <p>23 document. It has a document control number on it of</p> <p>24 NAM 01474 through 01480. I'll note for the record that</p>	<p>1 A. No.</p> <p>2 Q. Do you know where the number came from?</p> <p>3 A. I don't.</p> <p>4 Q. Do you recognize any of the handwriting</p> <p>5 on the document?</p> <p>6 A. I don't.</p> <p>7 Q. Take a look at the model assumptions</p> <p>8 which is under projected results. It's on the page we</p> <p>9 were just looking at.</p> <p>10 A. Okay.</p> <p>11 Q. And I'm going to give you a minute to</p> <p>12 read them, sir. I'm going to ask then whether or not</p> <p>13 any of these assumptions were discussed among your team</p> <p>14 prior to the acquisition.</p> <p>15 A. Okay.</p> <p>16 Q. Do you recall discussing any of these</p> <p>17 model assumptions with John Rubin or Heather Harde prior</p> <p>18 to the acquisition of CCMi?</p> <p>19 A. No.</p> <p>20 Q. So none of these model assumptions</p> <p>21 presently look familiar to you at all?</p> <p>22 A. No.</p> <p>23 Q. Were you involved in discussing with Bob</p> <p>24 Fireman or Ann Raider what News America Marketing could</p>

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LELLOUCHE-5/25/07

Page 93

1 do, would do, to grow CCMi's business post acquisition?
 2 A. Say that to me one more time, please.
 3 Q. Were you involved in any conversations
 4 that in substance dealt with the topic of what News
 5 America Marketing would do for CCMi post acquisition to
 6 help grow the business?
 7 A. Yes.
 8 Q. Can you tell me what you recall saying
 9 News America Marketing would do for CCMi to help grow
 10 CCMi's business post acquisition?
 11 MR. KATZ: Before you answer, this is my
 12 err, is your question asking for discussions that
 13 Mr. Lellouche had prior to the closing?
 14 MR. PETERS: Yes.
 15 MR. KATZ: Or at any time?
 16 MR. PETERS: Prior to closing.
 17 A. Oh, I did not have any.
 18 Q. So just so we have the question now
 19 clarified, you have no recollection of talking to Bob
 20 Fireman or Ann Raider about what News America Marketing
 21 would do for CCMi to help grow revenue prior to the time
 22 that the company was acquired?
 23 A. I had none.
 24 Q. Do you have a memory of talking to John

Page 94

1 Rubin about that topic?
 2 A. I don't have any memory of that at all.
 3 Q. Do you have any memory of talking to
 4 Heather Harde about that?
 5 A. No.
 6 Q. Do you remember anything about the level
 7 of funding for CCMi's business prior to the time it was
 8 acquired? I'm going to give you the number of a million
 9 and a half to see if it refreshes a recollection.
 10 MR. KATZ: Objection to the form of the
 11 question.
 12 A. The first time I heard a million and a
 13 half dollars was yesterday.
 14 Q. Do you recall any discussions with Bob
 15 Fireman or Ann Raider about synergies between News
 16 America Marketing and CCMi; in other words, how News
 17 America Marketing could help CCMi develop as a company?
 18 MR. KATZ: Objection, time period.
 19 Q. Prior to the closing?
 20 A. No.
 21 Q. Did you talk to Bob Fireman at this
 22 meeting that you spoke about a while back about News
 23 America Marketing and what News America Marketing does?
 24 A. Which meeting?

Page 95

1 Q. The one that occurred prior to your
 2 recommendation to the boards or to the companies that
 3 CCMi be acquired?
 4 A. No, there was no discussion like that at
 5 all.
 6 Q. Did you ever try to market News America
 7 Marketing to CCMi; in other words, tell CCMi why News
 8 America Marketing would be a good partner?
 9 A. No.
 10 Q. There was never any discussion about News
 11 America Marketing and its capabilities prior to the
 12 acquisition that you can recount for me?
 13 A. I cannot recount any for you.
 14 Q. Were you involved at all in the
 15 negotiations that led to the execution of a stock
 16 purchase agreement for CCMi?
 17 A. No.
 18 Q. Did you read the stock purchase agreement
 19 prior to the execution?
 20 A. No.
 21 Q. Had you ever read the stock purchase
 22 agreement?
 23 A. Only recently.
 24 Q. So not in the context of your work with

Page 96

1 Bob Fireman or Ann Raider; is that correct?
 2 A. Correct.
 3 Q. Following the acquisition of CCMi what
 4 was your role with the company; and by the company, sir,
 5 I should say CCMi, now a division or entity within News
 6 America Marketing?
 7 A. Initially it was none. John Rubin was
 8 overseeing the business. I was working on the Softcard
 9 program/product/company. However, when John Rubin left
 10 the company Dave Devoe, Jr. asked me to take on both
 11 responsibilities, Softcard as well as CCMi.
 12 Q. Why did John Rubin leave NAM?
 13 A. He left to go for another opportunity.
 14 Q. Where did he go?
 15 A. He went to Greenfield Online.
 16 Q. What kind of company is that?
 17 A. Online research.
 18 Q. Is that where he is presently?
 19 A. No.
 20 Q. He's back with News Corp.?
 21 A. News America Marketing.
 22 Q. What's his position these days?
 23 A. He is a manager or a VP of the
 24 co-marketing group.

LELLOUCHE-5/25/07

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Page 97

Page 99

1 Q. Co-marketing?

2 A. Yes.

3 Q. Can you tell me what that is?

4 A. I described it earlier. That's the group
5 that secures the contracts with the retailers as well as
6 executes programs on an account-specific basis utilizing
7 our core products.

8 Q. And tell me about the conversation, if
9 you would, between you and Mr. Devoc where he asked you
10 to take on the responsibilities both for Softcard and
11 for CCMI?

12 A. I really don't recall any specifics of
13 it. It was an assignment.

14 Q. Were you told how much time you should
15 devote to CCMI or Softcard?

16 A. No.

17 Q. How much of your time was taken up on
18 Softcard at the time you were asked to take on CCMI?

19 A. I don't recall.

20 Q. Immediately prior to taking on the
21 responsibility for heading up CCMI, how much time were
22 you spending on a weekly basis on Softcard?

23 A. It varied at times; some more, some less,
24 depending on whether we were in the midst of testing in

1 some point where it was requiring less time to oversee?

2 A. No, no, it was about the same. We hadn't
3 launched the test in Albuquerque yet. Things were still
4 developmental at the time.

5 Q. For what period of time did you devote
6 your professional energies to trying to get the Softcard
7 investment off the ground? So 1999 to when?

8 A. 2002, 2003, something along those lines.

9 Q. Then at that point the determination was
10 made to pull the plug on Softcard?

11 MR. KATZ: Objection.

12 A. I don't really know what pull the plug
13 means.

14 Q. It's like kissing a frog except
15 backwards. It means no longer devoting your energies to
16 trying to get this failed undertaking to succeed.

17 MR. KATZ: Objection.

18 Q. Then I'm going to go back to pulling the
19 plug. That's what I mean. What I'm getting at, all
20 kidding aside, because there is very little opportunity
21 for that typically, what I'm asking you is this: Was
22 2003 when News America Marketing finally made the
23 determination that your energies were not, should not be
24 utilized to try to continue to get Softcard to be a

Page 98

Page 100

1 Albuquerque or whether we were still in developmental
2 stages.

3 Q. What was your job title at the time you
4 were asked to take on responsibilities for heading up
5 CCMI?

6 A. I was senior vice-president of News
7 America Marketing.

8 Q. What were your job responsibilities
9 immediately prior to taking on the responsibilities for
10 heading up CCMI?

11 A. I was responsible for oversight of CCMI
12 as well as oversight of Softcard.

13 Q. No, I mean immediately prior to taking on
14 CCMI?

15 A. Oh, I'm sorry. Say it again, please.

16 Q. Immediately prior to taking on the
17 responsibilities for overseeing CCMI, what were your job
18 responsibilities as a senior vice-president for News
19 America Marketing?

20 A. I was managing the Softcard investment.

21 Q. Anything else?

22 A. Not that I can recall.

23 Q. At the time you were asked to take on
24 oversight of CCMI, had the Softcard investment reached

1 successful investment?

2 A. It may have been earlier than that, but
3 it was on or around that time when I, my activity with
4 Softcard diminished dramatically.

5 Q. And until that time you were working
6 diligently to try to get Softcard to succeed?

7 A. Of course.

8 Q. And simultaneously you were overseeing
9 CCMI?

10 A. Yes.

11 Q. Prior to taking on the responsibility for
12 overseeing CCMI, all of your professional energy was
13 dedicated to Softcard?

14 A. Yes.

15 Q. And you did not diminish your
16 professional energy to try to get Softcard off the
17 ground after taking on CCMI, did you?

18 MR. KATZ: Objection.

19 Q. You worked just as hard on Softcard,
20 didn't you?

21 A. The amount of work that was required by
22 me relative to Softcard ebbed and flowed. It wasn't an
23 all-consuming activity.

24 Q. Ever?

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LELLOUCHE-5/25/07

Page 101

Page 103

1 A. At times it was. At times it wasn't.
 2 Q. When you took over CCMI did you take over
 3 any of Ann Raider's responsibilities?
 4 MR. KATZ: Objection.
 5 A. Not initially.
 6 Q. When you took over CCMI did you take over
 7 any of Bob Fireman's responsibilities?
 8 A. Not initially again.
 9 Q. Why, sir, were you the logical choice to
 10 take over CCMI when Bob Fireman and Ann Raider had the
 11 expertise in running that business?
 12 A. I was the News America Marketing
 13 representative to a CFO, so I was the one who was
 14 reporting in to management about the activities of the
 15 business.
 16 Q. You said initially you didn't take over
 17 any of Ann Raider's responsibilities for CCMI. Did that
 18 change?
 19 A. Over time, yes.
 20 Q. Can you describe the genesis of that?
 21 A. Well, initially, and if I'm getting this
 22 out of chronological order, Kevin Tripp moved into,
 23 moved under working with Marty Garofalo, who was in
 24 charge of the iGroup's manufacturing sales effort. So

1 Q. There were sales reps that reported to
 2 Ann Raider?
 3 A. Mm-hmm, yes.
 4 Q. And then they reported to you?
 5 A. Yes.
 6 Q. And that improved sales?
 7 A. Somewhat.
 8 Q. How much?
 9 A. I don't recall.
 10 Q. De minimus?
 11 A. I don't recall.
 12 Q. That's a legal term for meaning not a
 13 whole lot.
 14 A. Not a whole lot.
 15 Q. And the responsibilities that you took
 16 over from Bob Fireman, can you describe those for me and
 17 when they were removed from him?
 18 A. Bob was managing the operations of the
 19 business and he was managing all the card production,
 20 all the data processing, data hosting, all the
 21 operational elements. On or around July of 2001 we
 22 moved all of that activity, except for the data hosting,
 23 over to Mike Cleary who had joined the group as VP of
 24 operations. He had actually joined the group in January

Page 102

Page 104

1 that was not my doing. That was done separately from
 2 me. And I believe he initially worked for Ann. And
 3 then subsequent to that I took over the management of
 4 the retail sales effort, which was Ann's responsibility.
 5 Q. Are there other responsibilities that
 6 were once Ann Raider's and then assumed by you besides
 7 the two that you just articulated?
 8 A. None that I can recall.
 9 Q. Why did you take over the retail sales
 10 effort from Ann Raider?
 11 A. Lack of performance, lack of ability to
 12 manage, lack of deliverables.
 13 Q. Anything else?
 14 A. No.
 15 Q. How did the performance improve once you
 16 took over?
 17 A. Ann was able to focus on her sales as
 18 opposed to management, which was not her strength, and I
 19 was able to devote more energy to direct supervision of
 20 the sales force.
 21 Q. And did --
 22 A. Several of whom were in New York right
 23 outside of my office. So it became much easier to have
 24 to interface with them.

1 2001.
 2 Q. And I take it Mr. Cleary had had
 3 extensive experience in loyalty marketing?
 4 A. No.
 5 Q. I take it he had extensive experience in
 6 card programs?
 7 A. No.
 8 Q. I take it he had some experience in card
 9 programs?
 10 A. No.
 11 Q. I take it he had some experience in
 12 loyalty marketing?
 13 A. No.
 14 Q. How did it make business sense to take
 15 away those responsibilities from someone who you've
 16 articulated was an expert as compared to anyone else at
 17 NAM?
 18 A. Did I articulate as an expert?
 19 MR. KATZ: I'm not sure he said that.
 20 Q. As between you and Bob Fireman who had
 21 expertise in loyalty marketing?
 22 A. Say that to me one more time.
 23 Q. As between anyone at NAM and Robert
 24 Fireman, in July of 2001 who had the expertise, who was

LELLOUCHE-5/25/07

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Page 105

Page 107

1 the expert, in loyalty marketing relying on data
 2 acquired at the point of sale?
 3 A. I wouldn't call it expertise. I would
 4 call it ineptitude.
 5 Q. I would call that nonresponsive. My
 6 question is -- I'm making a comparison. I'm asking you
 7 to tell me who had more expertise than Bob Fireman at
 8 News America Marketing in July of 2001 on loyalty
 9 marketing relying on data acquired at the point of sale?
 10 A. And I'm saying that expertise is
 11 debatable because performance proved the latter; he was
 12 not an expert.
 13 Q. Who had more experience in loyalty
 14 marketing relying on information generated at the point
 15 of sale in July of 2001, who? Was it Mike Cleary?
 16 A. Bob Fireman had more experience.
 17 Q. Did anyone at News America have more
 18 experience than Bob Fireman?
 19 A. No.
 20 Q. Let's go back earlier to you and your
 21 efforts in terms of taking over CCMI. Do you think it
 22 made sense to take a senior manager like yourself who
 23 was one hundred percent occupied on Softcard and give
 24 him responsibilities for overseeing CCMI?

1 Q. You sound like one of my associates. I
 2 mean per week. Ten to twelve hours a day?
 3 A. Sure.
 4 Q. Work on CCMI on a daily basis?
 5 A. There was never a -- it wasn't, okay,
 6 here's Softcard's day, here's CCMI's day, here's
 7 Softcard's day.
 8 Q. My question is, did you work on CCMI
 9 business on a daily basis do you think?
 10 A. Of course.
 11 Q. What were your job responsibilities for
 12 CCMI?
 13 A. At what time?
 14 Q. In 2000 when you first took over, what
 15 were you tasked with doing?
 16 A. I was tasked with supervising the
 17 activities of the business.
 18 Q. What did that involve?
 19 A. Attending executive committee meetings,
 20 providing feedback to management, giving direction to
 21 the senior management of CCMI, guiding them through a
 22 name change, guiding them through a location change,
 23 liaising with the organization.
 24 Q. Prior to taking over the role as the lead

Page 106

Page 108

1 MR. KATZ: Objection.
 2 Q. Do you think that made sense?
 3 MR. KATZ: Objection. You can still
 4 answer the question if you understand it.
 5 A. It made perfect sense to me.
 6 Q. How much of your business week was
 7 devoted to working on CCMI in 2000 when you first took
 8 over?
 9 A. I don't know.
 10 Q. Half?
 11 A. At least.
 12 Q. So you went from one hundred percent
 13 Softcard to at least fifty percent CCMI?
 14 A. I wouldn't say that's the case. I think
 15 that, you know, often times at News America you're asked
 16 to do more.
 17 Q. Is that what happened here? Did your
 18 hours increase, for example?
 19 A. Hours increased, support increased, ~~and~~
 20 breadth of coverage increased.
 21 Q. How many hours a week were you working in
 22 2000?
 23 A. Oh, anywhere from ten to twelve per day,
 24 not per week.

1 person at CCMI, what did you do to familiarize yourself
 2 with the business?
 3 A. Well, I had been attending meetings, and
 4 I had been learning as we went along, but I was quite
 5 reliant on the direction that Bob and Ann were providing
 6 in terms of the strategic plans of the company, vendor
 7 recommendations, retailer opportunities, manufacturer
 8 opportunities.
 9 Q. Okay. So you learned on the job like you
 10 did back in the days when you went from Sheraton to Act
 11 Media; right?
 12 A. Yes.
 13 Q. You didn't sit down with Bob Fireman or
 14 Ann Raider and get sort of a download of information
 15 over a period of weeks, did you?
 16 A. Oh, we had constant conversations back
 17 and forth.
 18 Q. How long after the acquisition did you
 19 become the head of CCMI, period of months; right?
 20 A. Period of months, probably on or around
 21 the time it became SmartSource Direct.
 22 Q. So we're talking seven or eight months
 23 later?
 24 A. That sounds about right.

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LELLOUCHE-5/25/07

Page 109

Page 111

1 Q. Okay. Did John Rubin leave after October
2 of '99?
3 A. I don't know.
4 Q. Did you take the position right after
5 John Rubin left?
6 A. I did.
7 Q. So if Rubin left in October of '99 it's
8 about what, three, four months after the acquisition
9 that you became the head of CCMi?
10 A. Yes.
11 Q. In that three or four months you believe
12 you learned enough about CCMi's business to run it?
13 A. From the level that I was running it with
14 the principals, Bob and Ann, really running the
15 day-to-day, it was enough to get started.
16 Q. But you couldn't run the company without
17 Bob's input, could you?
18 MR. KATZ: Objection. I mean, that's a
19 hypothetical.
20 A. I don't know that to be the case.
21 Q. You think you might have been able to run
22 CCMi without Bob Fireman's guidance?
23 A. I think that almost immediately when I
24 became involved with the business, it became clear that

1 Q. You didn't need Bob's help to do what Bob
2 was doing; right?
3 A. No, once the vendors were identified and
4 the subcontractors were identified we could proceed.
5 Q. You were ready to run this business after
6 four months?
7 A. We were able to assume management control
8 of the business.
9 Q. Let me just ask you this question from
10 the highest level. Do you think you succeeded?
11 MR. KATZ: Objection. Succeeded at what?
12 Q. Do you think you grew this business?
13 That was your goal, wasn't it?
14 A. The evidence is yes.
15 Q. Do you think that that has been a success
16 for News America Marketing?
17 A. Yes.
18 Q. The acquisition of CCMi?
19 A. I think that -- hum, I think that the
20 answer to that question is no.
21 Q. Okay.
22 A. I believe that we could have done this on
23 our own and saved ourselves a lot of money and
24 aggravation.

Page 110

Page 112

1 while Bob had experience at this that he was
2 obstructionist; that he was uncooperative; that he was
3 out for himself; that he had no intention of integrating
4 with the News America Marketing organization; that his
5 contributions were counterproductive in so many cases
6 that his presence at times was the complete opposite of
7 being instructive or constructive.
8 Q. Do you think you could run the business
9 without Bob's insight as to what he had done for the
10 past ten years to develop this market?
11 A. Certainly as well as it was being run.
12 Q. That's what you think?
13 A. Absolutely.
14 Q. You think you could do the business of --
15 strike that.
16 Do you think that you could do what Ann
17 Raider was doing for this business without Ann Raider's
18 guidance?
19 A. They were doing very little, so.
20 Q. So the answer is my question is yes?
21 A. Absolutely.
22 Q. You didn't need Ann's help to do what Ann
23 was doing; right?
24 A. No.

1 Q. Now, you mentioned that Bob did not want
2 to integrate with News America Marketing; that's your
3 perspective?
4 A. Yes.
5 Q. Were you involved in any of the
6 conversations that he had with John Rubin about the way
7 CCMi would be run post acquisition?
8 A. No, I was not.
9 Q. So you don't know what they spoke about?
10 A. I don't know what they spoke about.
11 Q. You did rely on information from --
12 strike that.
13 Do you think you had an obligation to
14 listen to Bob Fireman when it came to running the side
15 of the business that he had run for ten years?
16 MR. KATZ: Objection. Here we go again.
17 A. I believe that -- the answer is no.
18 MR. PETERS: Off the record.
19 (Discussion held off the record)
20 MR. PETERS: Let's go back on the record.
21 MR. KATZ: My objection to the word
22 obligation is now well known at this point.
23 Q. Do you think, sir, it made business sense
24 to listen to Bob Fireman and how he had run the business

LELLOUCHE-5/25/07

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Page 113	Page 115
<p>1 over the past ten years after taking over CCMi after</p> <p>2 four months?</p> <p>3 A. Initially I would say yes, but very</p> <p>4 quickly I would say no.</p> <p>5 Q. And don't you think, sir, that it made</p> <p>6 business sense to listen to Ann Raider and what she had</p> <p>7 done for the past decade for this business so that you</p> <p>8 knew what to do after only four months into the</p> <p>9 acquisition?</p> <p>10 A. I'll say again initially I would say yes,</p> <p>11 but very quickly it became clear that that was not the</p> <p>12 case.</p> <p>13 Q. Very quickly you believe you knew more</p> <p>14 about their business than they did; is that a fair</p> <p>15 statement?</p> <p>16 A. No.</p> <p>17 Q. Very quickly you believe that you could</p> <p>18 do a better job running their business than they had for</p> <p>19 the past ten years; is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. Now, was News America successful in</p> <p>22 competing against the other companies in the market,</p> <p>23 like Catalina?</p> <p>24 MR. KATZ: Objection. What areas are you</p>	<p>1 A. We tried to compete in certain segments</p> <p>2 that we thought made sense.</p> <p>3 Q. What segment?</p> <p>4 A. We tried to compete with them in the data</p> <p>5 hosting area. We tried to compete with them in</p> <p>6 application processing. We tried to compete with them</p> <p>7 in card production.</p> <p>8 Q. Were you successful in competing on any</p> <p>9 of these, in any of those fields?</p> <p>10 A. Modestly successful.</p> <p>11 Q. Do you attribute your modest success to a</p> <p>12 lack of effort?</p> <p>13 A. I attribute our modest success to a</p> <p>14 misjudgment of the marketplace by the principals, Bob</p> <p>15 and Ann, and to ineptitude.</p> <p>16 Q. How did they misjudge the marketplace</p> <p>17 from your perspective?</p> <p>18 A. Well, if you refer to their business</p> <p>19 plan, virtually none of the elements in the business</p> <p>20 plan even today be it News America Marketing or by third</p> <p>21 parties have actually come to fruition. They simply</p> <p>22 made an error.</p> <p>23 Q. So no one is making money in the places</p> <p>24 where CCMi said that there was money to be made?</p>
Page 114	Page 116
<p>1 referring to, what area of competition?</p> <p>2 Q. Targeted marketing.</p> <p>3 A. It wasn't even a goal of being able to</p> <p>4 compete directly with them. They were monstrosly</p> <p>5 larger than we were.</p> <p>6 Q. News Corporation is a multi-billion</p> <p>7 dollar company?</p> <p>8 A. It is not a multi-billion dollar company.</p> <p>9 Q. News America?</p> <p>10 A. Yes.</p> <p>11 Q. How big is News America Marketing?</p> <p>12 A. About a billion.</p> <p>13 Q. News America Marketing is a billion a</p> <p>14 year?</p> <p>15 A. Yes.</p> <p>16 Q. How big is Catalina?</p> <p>17 A. I would say that they're about three</p> <p>18 hundred fifty to four hundred million.</p> <p>19 Q. You didn't think that News America</p> <p>20 Marketing had the ability to compete with Catalina?</p> <p>21 MR. KATZ: Objection.</p> <p>22 Q. In direct marketing?</p> <p>23 A. No.</p> <p>24 Q. Did you try?</p>	<p>1 A. I am simply saying that several of their</p> <p>2 main businesses; card production, application</p> <p>3 processing, data hosting as a third-party function,</p> <p>4 completely evaporated.</p> <p>5 Q. Wasn't card production the segue to</p> <p>6 generating income by doing other things for a company?</p> <p>7 A. Card production was a revenue line for us</p> <p>8 and profit line.</p> <p>9 Q. Let me use an analogy for you, okay. If</p> <p>10 a company sells a camera at a loss so that they can sell</p> <p>11 film, would you consider that a bad business judgment?</p> <p>12 MR. KATZ: Objection.</p> <p>13 A. I don't see any, any relation to that to</p> <p>14 our business in your analogy.</p> <p>15 Q. You don't see card production as a way to</p> <p>16 generate relationships with customers that you can then</p> <p>17 do additional business with?</p> <p>18 A. News America doesn't operate on loss</p> <p>19 leaders. Everything has to stand on its own to make a</p> <p>20 profit and a substantial profit.</p> <p>21 Q. If News America sees something as a loss,</p> <p>22 a potential loss leader, they don't invest it in any</p> <p>23 longer?</p> <p>24 A. They wouldn't invest in it to begin with.</p>

Page 117

1 Q. Once they determine that it's a loss
2 leader they no longer invest; that's your experience?
3 A. Absolutely.
4 Q. And that accounts for Softcard; did they
5 think Softcard was a loss leader?
6 A. They didn't think Softcard was a loss
7 leader. It was an R&D investment.
8 Q. Did they continue to put investment into
9 Softcard?
10 A. No.
11 Q. Did they continue to invest resources
12 such as Henri Lellouche in Softcard?
13 A. After the Albuquerque test I virtually
14 devoted no attention to that business.
15 Q. Were you privy to any conversations with
16 Bob Fireman or Ann Raider where the profitability of
17 card production was discussed --
18 A. Certainly.
19 Q. -- prior to the acquisition?
20 A. Oh, I'm sorry. I answered too quickly.
21 No.
22 Q. Was the profit margin on card production
23 approximately ten percent, nine percent? Do you
24 remember that?

Page 118

1 A. No, it was more than that.
2 Q. What do you remember the profit being on
3 card production?
4 A. It ranged. Well, right now it's about
5 fifteen, sixteen percent on the little bit of card
6 activity that we do still. It had been higher.
7 Q. Is fifteen percent considered a loss
8 leader by News America Marketing?
9 A. Fifteen percent is nothing to brag about.
10 Q. Is that fifteen percent to the bottom
11 line?
12 A. Fifteen percent is the operating profit
13 before overhead, so if you consider overhead allocation
14 it probably was a loss.
15 Q. Did News America Marketing during your
16 tenure as head of CCMi have any conversations about the
17 wisdom of investing in card production as a way to
18 develop relationships with customers; grocery stores,
19 drug store chains?
20 A. Say that one more time.
21 Q. Did you explore the production of cards
22 as a way to engender relationships with supermarket
23 chains and drug store chains?
24 A. It wasn't necessary. We had the

Page 119

1 relationships. We didn't need to engender goodwill by
2 selling at a loss.
3 Q. And fifteen percent is a loss?
4 A. Fifteen percent does not meet the profit
5 hurdles of News America Marketing as a company.
6 Q. What are the profit hurdles?
7 A. Higher.
8 Q. What are they?
9 A. Currently News America Marketing -- I
10 don't know if this is confidential information.
11 Q. We can deal with this. We can treat it
12 as confidential.
13 A. It's not published.
14 Q. I won't disclose it.
15 MR. KATZ: You know what, could we go off
16 the record for a moment.
17 (Discussion held off the record)
18 MR. PETERS: We had a brief conversation
19 off the record. There is sensitivity, maybe significant
20 sensitivity, to disclosing this information. I'm not
21 taking a position on the record whether or not I opt
22 that as a legitimate concern obviously, but it's been
23 articulated and I'm going to respect that they're going
24 to explore getting me the information perhaps in

Page 120

1 response to an interrogatory or even informally if it
2 can be provided in a way admissible at the time of
3 trial. I accept that for the purposes of this
4 deposition, but I want to explore a little more about
5 this notion fifteen percent is an inadequate profit for
6 News America Marketing.
7 Q. The next question is this: Have the
8 minimum profit targets changed over time?
9 A. No.
10 Q. Has --
11 A. I'm sorry, can you define for what
12 business?
13 Q. News America Marketing, has News America
14 Marketing always had profit targets? Has News America
15 Marketing said in substance, If we can't make this kind
16 of income, we're not interested in pursuing this line of
17 business?
18 A. Yes.
19 Q. Has that always been a number, a specific
20 number?
21 A. I don't know that it's been a specific
22 number, but it is well north of a gross profit of
23 fifteen percent. If you understand what I mean by gross
24 profit versus net profit.

LELLOUCHE-5/25/07

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Page 121	Page 123
<p>1 Q. Okay. So a gross profit prior to any</p> <p>2 overhead allocation, for example?</p> <p>3 A. Correct.</p> <p>4 Q. And I take it that prior to acquiring</p> <p>5 CCMi, News America Marketing disclosed this to Ann</p> <p>6 Raider and Bob Fireman so that they could make an</p> <p>7 intellectual decision about whether or not to sell their</p> <p>8 company?</p> <p>9 MR. KATZ: Objection.</p> <p>10 A. We certainly didn't buy this company to</p> <p>11 print cards.</p> <p>12 Q. Yeah, you see, I asked a different</p> <p>13 question.</p> <p>14 A. Go ahead. I apologize.</p> <p>15 Q. My question is this: Prior to</p> <p>16 negotiating to acquiring Ann Raider's and Bob Fireman's</p> <p>17 company, do you know whether or not News America</p> <p>18 Marketing disclosed to them that unless a certain profit</p> <p>19 level, a specified profit level was reached News America</p> <p>20 Marketing would not pursue a line of business?</p> <p>21 A. I don't know the answer to that question.</p> <p>22 MR. KATZ: That's a yes or no.</p> <p>23 Q. And did you explore the profitability of</p> <p>24 the card production? Did you explore the profitability</p>	<p>1 that even at twenty percent profit margin card</p> <p>2 production would not be undertaken?</p> <p>3 A. It was undertaken.</p> <p>4 Q. When did News America Marketing stop</p> <p>5 producing cards by virtue of profitability?</p> <p>6 A. We have not stopped producing cards.</p> <p>7 MR. KATZ: Can we take a break whenever</p> <p>8 it's a convenient point for you?</p> <p>9 MR. PETERS: Sure.</p> <p>10 MR. KATZ: Is now a convenient time?</p> <p>11 MR. PETERS: Sure.</p> <p>12 (Recess taken)</p> <p>13 BY MR. PETERS:</p> <p>14 Q. Mr. Lellouche, was there a business plan</p> <p>15 in place for CCMi when you took over as its head?</p> <p>16 A. There was an existing business plan.</p> <p>17 Q. Was that the business plan that Ann and</p> <p>18 Bob had prepared?</p> <p>19 A. Yes.</p> <p>20 Q. What did it call for?</p> <p>21 A. It called for increases in card</p> <p>22 production, retailer activity. It called for increases</p> <p>23 in application processing. It called for increases in</p> <p>24 data hosting. It called for increases in marketing</p>
Page 122	Page 124
<p>1 of card production prior to acquiring NAM?</p> <p>2 A. Yes, it was substantially higher prior to</p> <p>3 the acquisition than it was post acquisition, which was</p> <p>4 indicative of the demise of that product line.</p> <p>5 Q. What was it prior?</p> <p>6 A. It was probably about twenty percent.</p> <p>7 Q. And then it went to fifteen?</p> <p>8 A. Then it went down to ten, five, zero, out</p> <p>9 of the business.</p> <p>10 Q. Well, you gave me the number of fifteen</p> <p>11 percent. Where does that number come from?</p> <p>12 A. Oh, fifteen percent is what we're, is our</p> <p>13 profit margin on some activity we do at Long's, which is</p> <p>14 really our only legacy activity on the card and card</p> <p>15 processing side of the business.</p> <p>16 Q. Did the profit margin of twenty percent</p> <p>17 prior to the acquisition of CCMi meet News America</p> <p>18 Marketing's threshold for investment?</p> <p>19 A. As a standalone probably not. As a mix</p> <p>20 of business it was -- as long as the mix of business</p> <p>21 ended up in a favorable position it was okay, but it was</p> <p>22 not something that was a feather in our cap.</p> <p>23 Q. Did you ever disclose or did anyone at</p> <p>24 News America ever disclose to Bob Fireman and Ann Raider</p>	<p>1 programs.</p> <p>2 Q. Were you committed to executing that</p> <p>3 business plan?</p> <p>4 A. Yes.</p> <p>5 Q. Did you have an idea as to how to achieve</p> <p>6 the increases discussed in the business plan?</p> <p>7 A. Yes.</p> <p>8 Q. Did it involve using resources of News</p> <p>9 America Marketing?</p> <p>10 A. Yes.</p> <p>11 Q. Did it involve using News America</p> <p>12 Marketing's sales force?</p> <p>13 A. Where necessary and where appropriate.</p> <p>14 Q. Did you believe that the name Consumer</p> <p>15 Card Marketing, Inc., had goodwill associated to it,</p> <p>16 with it, at the time you took over as its head?</p> <p>17 A. I don't know.</p> <p>18 Q. Did you undertake any effort to evaluate</p> <p>19 whether there was goodwill associated with the name</p> <p>20 CCMi?</p> <p>21 A. No.</p> <p>22 Q. The name was changed at some point,</p> <p>23 wasn't it? Tell me about the name change. When did</p> <p>24 that happen and what was the reason for it?</p>

Page 125

Page 127

1 A. I don't recall when the name change
 2 happened, but we changed the company name to SmartSource
 3 Direct as part of a corporate rebranding of our entire
 4 organization.
 5 Q. Was there any discussion in the context
 6 of changing CCMI's name to SmartSource Direct as to
 7 whether or not there was goodwill associated with CCMI?
 8 A. I don't -- I was not involved in any
 9 discussion to that end.
 10 Q. Do you know whether or not Ann Raider or
 11 Bob Fireman were consulted about the name change?
 12 A. I don't know the answer to that question.
 13 Q. Do you believe they should have been
 14 consulted?
 15 A. No.
 16 Q. There was a change in the reporting
 17 structure very shortly after the acquisition. We began
 18 to talk about that. You took over for David Devoe; is
 19 that correct, in terms of heading up the iGroup?
 20 MR. KATZ: Objection.
 21 A. That's incorrect.
 22 Q. When was the iGroup formed?
 23 A. The iGroup was formed on or around 2000
 24 and it was headed up by Chris Mixon.

Page 126

1 Q. Who was in the iGroup?
 2 A. I can't name every person that was in the
 3 iGroup.
 4 Q. I mean entities?
 5 A. Oh, Softcard, SmartSource.com, and
 6 SmartSource Direct.
 7 Q. And who headed up Softcard, you?
 8 A. I oversaw Softcard. They had their own
 9 management organization. We were a minority investor.
 10 Q. Was there any discussion prior to
 11 acquiring CCMI about investing in it instead of
 12 acquiring it?
 13 A. I don't recall any conversation like
 14 that.
 15 Q. Back to the iGroup. Who headed up
 16 SmartSource.com?
 17 A. Heather Harde, H A R D E.
 18 Q. Ms. Harde reported to Mr. Mixon?
 19 A. Yes.
 20 Q. And you headed up SmartSource Direct?
 21 A. Yes.
 22 Q. And you reported to Mr. Mixon?
 23 A. Yes.
 24 Q. So there are e-mail between you and Mixon

1 discussing the business of SmartSource Direct, I take
 2 it?
 3 MR. KATZ: Objection.
 4 A. Yes.
 5 Q. Did you communicate with Mr. Mixon by
 6 e-mail?
 7 A. Yes.
 8 Q. Frequently?
 9 A. I don't know.
 10 Q. Did you communicate with Mr. Mixon by
 11 e-mail back in 2000?
 12 A. Minimally.
 13 Q. Did Mr. Mixon communicate with you by
 14 e-mail?
 15 A. Yes.
 16 Q. Back in 2000?
 17 A. Yes.
 18 Q. Was CCMI operated as a standalone
 19 business unit at any time after the acquisition?
 20 A. I'm not sure I understand the question.
 21 Q. In other words, a unit that was
 22 autonomous, that was run within News America Marketing
 23 as a division?
 24 A. Yes.

Page 128

1 Q. But was run the way it had been run prior
 2 to the acquisition?
 3 A. No.
 4 Q. How did the management of News America
 5 Marketing -- pardon me. How did the management of CCMI
 6 change in the first year after the acquisition?
 7 A. Well, certainly I became involved in
 8 SmartSource Direct. Mike Cleary joined the group and
 9 eventually headed up operations. The IT or the better
 10 part of the IT group moved down to co-locate with our IT
 11 organization down in Wilton. Much of the accounting
 12 function was absorbed into the News America Marketing
 13 accounting organization. That's all I can recall.
 14 Q. You testified earlier that you were
 15 committed to trying to follow the business plan of CCMI;
 16 is that correct?
 17 MR. KATZ: Objection.
 18 A. You're going to have to read it back to
 19 me. I don't know what I said then.
 20 Q. You knew there was a business plan at
 21 CCMI; right?
 22 A. Yes.
 23 Q. And that it was an existing business plan
 24 that included increasing card production?

Page 129

Page 131

1 A. Yes.
 2 Q. Included increasing work with retailers?
 3 A. Yes.
 4 Q. Included work on data hosting?
 5 A. Yes.
 6 Q. Included a variety of marketing programs?
 7 A. Yes.
 8 Q. Okay, and you were going to follow that
 9 plan, that was your goal or your intention; right?
 10 A. That was the initial goal, yes.
 11 Q. When did that change?
 12 A. It changed as the marketplace changed. I
 13 don't know the dates.
 14 Q. Which of these goals were abandoned?
 15 MR. KATZ: Objection.
 16 A. Goals?
 17 Q. Yeah, which of these plans were
 18 abandoned?
 19 MR. KATZ: Objection.
 20 A. I'm not sure I understand and I want to
 21 answer clearly.
 22 Q. Did News America ever abandon any part of
 23 CCMI's business plan as best you know?
 24 A. Yes.

Page 130

1 Q. What aspects of CCMI's business plan did
 2 News America Marketing abandon?
 3 A. We abandoned the data -- I'm sorry, we
 4 abandoned or began to walk away from the application
 5 processing business, because it was literally
 6 evaporating before our eyes as retailers decided to go
 7 directly to the data entry facilities themselves. We
 8 were desecrated out of the process. We abandoned the
 9 ASP-type data hosting program because it became clear
 10 that we had, or I should say Bob and Ann had misjudged
 11 the marketplace and the aptitude for ASP-type hosted
 12 data solutions. We slowly walked away from the card
 13 business for much the same reason as the applications
 14 transactions because that business essentially
 15 evaporated also as retailers went direct to the
 16 factories.
 17 Q. Would you take a look at Exhibit 1 and
 18 turn to the second page of the document?
 19 A. Yes.
 20 Q. The second bullet point from the bottom
 21 says, Sales force economies. Do you see that?
 22 A. Yes.
 23 Q. It reads, By leveraging a coordinated
 24 sales effort, News America's sales force will be trained

1 to incorporate CCMI's products into its single source
 2 portfolio. CCMI will be substantially more profitable
 3 and demonstrate increased growth as a subsidiary of News
 4 America Marketing.
 5 Do you understand what that means in the
 6 context of the transaction with CCMI?
 7 A. Yes.
 8 Q. Did that occur?
 9 MR. KATZ: Objection. Did what occur?
 10 Q. The bullet point I just read, did it come
 11 to pass?
 12 MR. KATZ: Whoa, whoa, whoa, time out.
 13 There are a number of different things that are
 14 indicated in the bullet. That's my question. Are you
 15 asking did all of these events occur?
 16 Q. Yes, sir. Did all of them happen?
 17 A. No.
 18 Q. Which part of this bullet point did not
 19 occur?
 20 A. CCMI -- News America's sales force is
 21 predominantly the CPG sales force. And the fact of the
 22 matter is that CCMI had no product. There was nothing
 23 for them to sell. There was nothing for them to go out
 24 and integrate into a single source portfolio; hence, no

Page 132

1 impact on profitability, no increase in growth.
 2 Q. Well, this document which was authored by
 3 and produced by News America Marketing states, News
 4 America's sales force will be trained to incorporate
 5 CCMI's products into a single source portfolio.
 6 Is it your testimony that at the time
 7 this document was prepared CCMI had no products?
 8 A. They had no manufacturing products.
 9 Q. Did they have services that could be
 10 sold?
 11 A. Not that I know of.
 12 Q. What were you buying, what did you think
 13 you were buying when News America Marketing bought CCMI?
 14 A. We were buying the promise of being able
 15 to have products to be sold.
 16 Q. And I take it your testimony would be
 17 once there were those products they would then be sold
 18 by a trained sales force; that was the plan?
 19 A. Say again, please.
 20 Q. I take it your testimony is that once
 21 CCMI had products then the sales force would be trained
 22 on those products and would sell them?
 23 A. And --
 24 Q. Was that the plan?

1 A. And they have been trained on those
2 products and they are selling them.
3 Q. How many sales reps?
4 A. For SmartSource Direct there are five
5 sales reps plus an account coordinator; however, the
6 entire sales force is out representing the direct mail
7 capability that is now meaningful on a nationwide basis
8 but was virtually meaningless at the time of this
9 authored document.

10 Q. Help me understand that. What do you
11 mean?

12 A. Well, we're in the business of mass
13 marketing. We're in the business of impacting
14 billion-dollar brands' impact on sales, market share,
15 volume. At the time of this document, 1999, loyalty
16 marketing was very niche. Kroger hadn't rolled out.
17 Albertson's hadn't rolled out. Winn-Dixie hadn't rolled
18 out. Wal-Mart never rolled out. Publix never rolled
19 out. And conversely, our core products were in
20 virtually all of these companies, these retailers'
21 locations. So the idea that we were going to have our
22 150 percent sales force go out and represent that you
23 can do a great direct mail program at Stop & Shop when
24 these people are out there trying to drive a billion

1 MR. KATZ: Objection.

2 A. What market?

3 Q. The market for loyalty programs relying
4 on data generated at the point of sale, was that an
5 emerging market?

6 A. It was and it is.

7 Q. And is it a market that other companies
8 have developed?

9 A. Yes.

10 Q. Is it a market that News America
11 Marketing has developed?

12 A. Yes.

13 Q. Is it a market that has been developed by
14 using a sales force to educate manufacturers?

15 A. Yes.

16 Q. And when we read the bullet point in
17 Exhibit 1 about training a sales force to incorporate
18 CCM's products into a single source portfolio, was part
19 of the idea to get that sales force to educate
20 manufacturers about this emerging market?

21 A. They're not in the business of education.

22 MR. KATZ: Objection.

23 A. They're in the business of selling.

24 Q. Isn't sales education on some level?

1 dollar business is ludicrous.

2 Q. Why?

3 A. Because these people have ten, fifteen,
4 twenty million dollar goals individually.

5 Q. It would have been ludicrous to represent
6 to Ann and Bob that that's what News America Marketing
7 intended to do; right?

8 A. Not the case at all. If they came up
9 with products that could have been sold to the entire
10 sales force, it would have been turned over to the
11 entire sales force. We're in the business of making
12 money.

13 Q. Your testimony is had there been products
14 to sell, News America Marketing would have turned it
15 over to the entire sales force?

16 A. Had their business plan panned out, there
17 would have been products to sell. It did not.

18 Q. Now, did you believe that News America
19 Marketing had an obligation to try to develop that
20 market?

21 MR. KATZ: Objection.

22 A. No.

23 Q. Did you understand that it was an
24 emerging market?

1 A. Only if it converts into revenue.

2 MR. KATZ: Objection.

3 Q. When you see a salesman out there or
4 sales woman out there selling a product, don't they have
5 to educate the potential buyer about the wisdom of
6 acquiring the product or service?

7 A. What product, what service?

8 Q. Any product, isn't that the job of a
9 salesman is teacher, isn't it, in part?

10 MR. KATZ: Objection.

11 A. No.

12 Q. You don't think salesmen are supposed to
13 be out there trying to educate the buyers about the
14 wisdom of acquiring a product or service?

15 MR. KATZ: Objection.

16 A. That's not their principal job.

17 Q. You don't think that has a role in sales?

18 A. No.

19 Q. Trying to describe to the end-user why
20 News America Marketing is the company to go with?

21 A. That is not their job.

22 Q. That's not their job, okay.

23 MR. KATZ: Just hold on one second.

24 (Counsel conferred with witness)

LELLOUCHE-5/25/07

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Page 137

Page 139

1 MR. PETERS: I'm going to ask you,
2 Gordon, not to correspond with the witness in the middle
3 of an examination unless it's about privilege issues or
4 issues such as the threatened disclosure of proprietary
5 information.
6 Q. Mr. Lellouche, what reports were removed
7 from Ann Raider and Bob Fireman in the first six months
8 of CCMi's acquisition?
9 A. The first six months, I don't know.
10 Q. Prior to removing any report, any
11 employee who reported to Ann Raider or Bob Fireman, did
12 you consult with them about the decision to do that?
13 A. I had many consultations with Ann and Bob
14 over performance, lack thereof.
15 Q. So every time someone was removed from
16 CCMi or working directly I should say with Ann Raider
17 and Bob Fireman, it was a performance issue?
18 A. It was either a performance or an
19 effectiveness issue.
20 Q. What's the difference between the two?
21 A. Well, we were trying to align the
22 business to be most effective and most profitable and
23 utilize our resources that we had available to us.
24 Q. In doing that or in endeavoring to do

1 those budget proposals?
2 A. I asked them for projections on revenue.
3 Q. Did you seek Bob Fireman's input before
4 submitting these proposed budgets to News America
5 Marketing?
6 A. Only on revenue assumptions.
7 Q. So prior to sending these budgets in to
8 News America Marketing, I take it you didn't run them by
9 Ann Raider or Bob Fireman?
10 A. No.
11 Q. Did you discuss the budgets specifically
12 with them before submitting them to News America
13 Marketing for approval?
14 A. No.
15 Q. Were there strategy sessions for the
16 iGroup -- actually let me make that smaller. Were there
17 strategy sessions for SmartSource Direct that occurred
18 on a regular basis?
19 A. There were annual strategy sessions,
20 formal strategy sessions.
21 Q. When did they take place?
22 A. Typically in the spring.
23 Q. Who attended?
24 A. Chris Mixon, possibly Bill Christie who

Page 138

Page 140

1 that did you first consult with Bob Fireman to get his
2 opinion about the wisdom of your decisions?
3 A. No.
4 Q. And before doing that did you consult
5 with Ann Raider to solicit her views on the wisdom of
6 your decision?
7 A. No.
8 Q. Who controlled CCMi's budget once you
9 took over?
10 A. News America Marketing.
11 Q. And was Ann Raider or Bob Fireman
12 consulted on expenditures that were to be charged
13 against CCMi's budget prior to expending the money?
14 MR. KATZ: Objection.
15 A. I don't know.
16 Q. Did you have any budget -- strike the
17 question. Did you have any autonomy over CCMi's budget?
18 MR. KATZ: Can I have that again?
19 Q. Did you have any autonomy over CCMi's
20 budget as the head of CCMi?
21 MR. KATZ: Objection.
22 A. I submitted budget proposals to News
23 America Marketing.
24 Q. And did you solicit Ann Raider's input on

1 succeeded Chris Mixon as president of the iGroup, other
2 representatives of NAM, HR, finance.
3 Q. Did Ann Raider attend?
4 A. Ann Raider presented.
5 Q. She was there at the strategy sessions?
6 A. She presented strategy sessions.
7 Q. She was there from the beginning to the
8 end, I take it?
9 A. I don't know that.
10 Q. Was Bob Fireman at the strategy sessions
11 that took place on an annual basis?
12 A. He presented.
13 Q. Did he present at all of them?
14 A. I don't know.
15 Q. Did Ann Raider present at all of them?
16 A. I don't know.
17 Q. Was Bob Fireman in attendance from the
18 beginning to the end of these strategy sessions or was
19 he there as a presenter?
20 MR. KATZ: Objection.
21 A. He was there as a presenter.
22 Q. Were Ann Raider and Bob Fireman invited
23 to these strategy sessions to help participate in the
24 development of a strategy for SmartSource Direct?

Page 141

1 A. As presenters.
 2 Q. But not as participants?
 3 A. They participated as presenters.
 4 Q. But only as presenters?
 5 A. Yes.
 6 Q. Were you there as a presenter?
 7 A. I presented an overview of the state of
 8 the business initially at the outcome, at the onset of
 9 these presentations.
 10 Q. And then you would stay in attendance at
 11 these meetings?
 12 A. Yes.
 13 Q. What was your role following your
 14 presentation?
 15 A. Note-taker, listener.
 16 Q. Facilitator?
 17 A. No.
 18 Q. No. Who did that type of work?
 19 A. That was done by people above me.
 20 Q. Mr. Mixon, for instance?
 21 A. Mr. Mixon, yes.
 22 Q. And were there PowerPoints generated for
 23 these strategy sessions?
 24 A. Yes.

Page 142

1 Q. Were there other documents generated to
 2 outline the existing business and future business of
 3 SmartSource Direct?
 4 A. I don't know that to be the case, no.
 5 Q. What documents do you remember were
 6 generally presented at these annual strategy sessions?
 7 A. A strategy deck, PowerPoint.
 8 Q. Do you still have them on your computer
 9 or any computer?
 10 A. I may have some.
 11 Q. Have you produced them to your attorney?
 12 A. I don't know.
 13 Q. Would you?
 14 A. Of course.
 15 Q. Were there other meetings other than
 16 these annual meetings where the future direction of
 17 SmartSource Direct was discussed; and I'm talking about
 18 organized, planned meetings, not water cooler stuff?
 19 A. There was the annual budget presentation.
 20 There was, as you said, the strategy session. That's
 21 the extent of it.
 22 Q. So the strategy session is what we've
 23 just finished talking about; right?
 24 A. Yes.

Page 143

1 Q. And the annual budget presentation, was
 2 that a presentation to the board of News America
 3 Marketing?
 4 A. Yes.
 5 Q. And who presented --
 6 A. Or the executive committee of the board.
 7 Q. Or the executive committee. And that --
 8 I'm sorry. Who presented at the annual budget
 9 presentation?
 10 A. I did.
 11 Q. Anyone else from SmartSource Direct?
 12 A. No.
 13 Q. Were there strategy sessions that Ann
 14 Raider and Bob Fireman were not invited to attend?
 15 A. Not that I can recall.
 16 Q. Did you attend executive committee
 17 meetings on a regular basis with Mr. Carlucci and
 18 others?
 19 MR. KATZ: Objection.
 20 A. No.
 21 Q. Prior to the acquisition did you
 22 understand that all of the sales staff and the marketing
 23 staff of CCMI reported to Ann Raider?
 24 A. Yes.

Page 144

1 Q. Did you understand that Ann Raider's role
 2 at CCMI prior to the acquisition included managing the
 3 retailer and manufacturer sales force of CCMI?
 4 A. Yes.
 5 Q. And after the acquisition she did not
 6 have sales staff reporting to her; correct?
 7 A. Yes.
 8 Q. And after the acquisition she did not
 9 manage the retailer and manufacturer sales force; right?
 10 A. Sometime after the acquisition.
 11 Q. What was the business justification for
 12 the decision to remove those areas of responsibilities
 13 from Ann Raider?
 14 A. At our discretion we opted to reorganize
 15 the group.
 16 Q. What was the justification other than
 17 whim?
 18 MR. KATZ: Objection.
 19 A. I don't think whim would be a word I
 20 would use in any business case.
 21 Q. That would be an improper thing to do;
 22 right?
 23 MR. KATZ: Objection.
 24 Q. Make a business decision based on whimsy?

LELLOUCHE-5/25/07

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Page 145

Page 147

1 A. I don't think it's a relevant term to use
 2 in this context.
 3 Q. Well, the reason I mention it is because
 4 you said at our discretion we changed the
 5 responsibilities. That's what you told me; right?
 6 A. Correct.
 7 Q. My question was, what's the business
 8 justification? There must be a business justification
 9 other than discretion. What was the business
 10 justification?
 11 A. Marty Garofalo came over to our group.
 12 He was heading up manufacturer sales for both the
 13 Internet business as well as the SmartSource Direct
 14 business. So it made sense to have Kevin Tripp, who was
 15 the sole manufacturing salesperson for SmartSource
 16 Direct, report to him. He had twenty years of
 17 experience calling on packaged goods companies.
 18 Q. Mr. Garofalo did?
 19 A. Oh, yeah, and on the retail side it just
 20 was a similar situation. I had extensive background in
 21 retail sales, and it was just a direction we chose.
 22 Q. Did Mr. Garofalo have any experience in
 23 loyalty programs, the types of things that you were
 24 trying to sell for CCM?

Page 146

1 A. No.
 2 MR. KATZ: Objection, but you can
 3 proceed.
 4 Q. And I think you've already told me you
 5 didn't have any experience either in loyalty programs,
 6 meaning programs relying on data generated at the point
 7 of sale; is that correct?
 8 A. That is correct.
 9 Q. Prior to removing these responsibilities
 10 from Ann Raider, did you have any conversation with her
 11 about the plan to do so?
 12 A. I don't recall.
 13 Q. Do you think it made sense to talk to Ann
 14 Raider prior to taking these responsibilities away from
 15 her to solicit her input or insight?
 16 A. I think that the decision to move the
 17 sales force supervision to me was a decision that was
 18 conveyed to Ann, not discussed with her.
 19 Q. My question was, do you think it made
 20 sense to discuss this decision with Ann Raider prior to
 21 executing it to solicit her insights?
 22 A. No, I don't.
 23 Q. Get her thoughts?
 24 A. No, I don't.

1 Q. Didn't make sense?
 2 A. No.
 3 Q. Why not?
 4 A. Well, we were rapidly coming to the
 5 realization that Ann was not capable of managing people.
 6 She was a very good salesperson, a very good solo
 7 contributor, and having a discussion of whether she's a
 8 good manager or not didn't seem to make sense because it
 9 was self-evident.
 10 Q. I take it that's reflected in all her
 11 evaluations?
 12 A. I couldn't say.
 13 Q. Were you her manager?
 14 A. Yes.
 15 Q. Did you fill out her evaluations?
 16 A. I did.
 17 Q. I'm not going to run through them with
 18 you now, but you can tell me that once I do run through
 19 them I will find that you made this observation in her
 20 evaluation because it was an important observation;
 21 right?
 22 A. I don't know.
 23 Q. Well, did you make all important
 24 observations in Ann Raider's evaluations?

Page 148

1 A. I don't know that that's included in a
 2 performance evaluation.
 3 Q. Is it an important critique that you're
 4 not a good manager of people? Isn't that something
 5 that's important?
 6 A. It is important.
 7 Q. As a manager and someone who does
 8 evaluations, isn't it your view that all important
 9 insights should be included in an evaluation?
 10 A. Yes.
 11 Q. So we would find them in there, wouldn't
 12 we, Mr. Lellouche?
 13 A. I don't know.
 14 Q. But in any event, that's why you took the
 15 sales responsibility away from Ann Raider because she
 16 was a poor manager; is that a fair statement?
 17 A. Yes.
 18 Q. Was Ms. Raider responsible for product
 19 development, creative services; client services -- you
 20 know what, sir, too many moving parts. Take it in
 21 smaller bites. Was Ms. Raider responsible for product
 22 development prior to the acquisition?
 23 A. She supervised the creative person within
 24 the organization.

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LELLOUCHE-5/25/07

Page 149

Page 151

1 Q. What's your understanding of what that
2 involved?
3 A. Producing presentations.
4 Q. Presentations to potential clients?
5 A. Yes.
6 Q. Did that change after the acquisition?
7 A. I don't recall.
8 Q. Did Ms. Raider have P&L responsibilities
9 prior to the acquisition?
10 A. I don't know.
11 Q. Did she manage the P&L for CCMi prior to
12 the acquisition?
13 A. I don't know.
14 Q. Did Ms. Raider stay involved in product
15 development after the acquisition?
16 A. Attempted to, yes.
17 Q. Who oversaw product development for CCMi
18 following the acquisition?
19 A. Myself, Bob Fireman, Ann Raider.
20 Q. Who headed it up?
21 A. I did.
22 Q. Did you continue to consult with Ann
23 Raider and Bob Fireman about product development
24 following the acquisition?

1 The question was, when did it not make sense to talk to
2 Ann Raider or Bob Fireman about product development?
3 And you've given me a couple of instances.
4 A. That's all I can think of right now.
5 Q. Now let's take a look at your statement
6 that you implored Bob Fireman to get out on the road and
7 sell, but he ignored your directive.
8 A. Yes.
9 Q. I take it that your testimony is that Bob
10 Fireman did not develop new products while he was at
11 News America Marketing or did not endeavor new products
12 when he was at News America Marketing?
13 A. That's not my testimony at all.
14 Q. How did he fall down on the task of
15 selling? Where did he fail you?
16 A. He didn't sell.
17 Q. Did he try?
18 A. Unsuccessfully.
19 Q. Did he develop a whole lot of different
20 programs that he shared with you?
21 A. He identified a number of programs and
22 virtually none of them converted into success.
23 Q. Now back to Ann Raider. Ann Raider was
24 someone who had product development responsibilities

Page 150

Page 152

1 A. Yes.
2 Q. Did that change over time?
3 A. No.
4 Q. Did you think it was a rational business
5 practice to consult with Ann Raider and Bob Fireman on
6 product development?
7 A. Say that again.
8 MR. PETERS: Can you read it back.
9 (Record read)
10 A. Yes, where appropriate.
11 Q. When was it inappropriate?
12 MR. KATZ: Objection.
13 A. At times it was difficult to engage in a
14 discussion, a meaningful discussion on product
15 development because of certain attitudes and viewpoints.
16 Q. Can you give me an example?
17 A. Well, if you refer to the performance
18 appraisal for Mr. Fireman, we had clearly exhausted our
19 efforts on the Effectivo product, yet he continued to
20 pursue it. I had implored him to go after more of the
21 Toshiba-like deals, and he ignored that recommendation.
22 I implored him to get out on the road, get out of the
23 office and sell, develop, and he ignored that.
24 Q. Anything else? And I'll refocus you.

1 prior to the acquisition. You consulted with her on
2 product development following the acquisition?
3 A. Yes.
4 Q. You thought that was a important thing to
5 do, didn't you?
6 A. Yes.
7 Q. And did you stop consulting with her on
8 product development?
9 A. No.
10 Q. Did your consultations change over time?
11 A. I'm not sure I understand what that
12 means.
13 Q. Did you consult with her less, did you
14 consult with her more, or did you consult with her about
15 the same from the beginning of the time you began
16 managing her until the time she left the company?
17 MR. KATZ: Objection.
18 A. I discussed with her many new product
19 developments, virtually every single one that they would
20 bring in over time. This is Bob and Ann.
21 Q. And that didn't change over time; right?
22 A. No.
23 Q. So your testimony is that you always
24 consulted with Ann and Bob about product development,

LELLOUCHE-5/25/07

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Page 153

Page 155

1 and you thought that was an important thing to do?

2 A. I'm saying that when they surfaced
3 products we discussed them. We pursued them if they
4 were, if they held promise. That was the extent of it.

5 Q. On the product development side did you
6 oversee the development of Aspen?

7 A. From a nontechnical standpoint, yes.

8 Q. What were your responsibilities in terms
9 of overseeing Aspen?

10 A. Observing it in its development from an
11 IT point of view, sitting in on meetings where the
12 product was being considered for use as a CRM tool after
13 Bob had recommended it, and contributing where I could.

14 Q. Was it successful?

15 A. No.

16 Q. What happened?

17 A. Bob and Ann misjudged the marketplace.
18 There was no appetite in the marketplace amongst the
19 larger retailers for an ASP-hosted solution. In fact,
20 they all built, all the large retailers to the CPG
21 companies built their own data warehouses, bought or
22 licensed or developed their own software, and it was
23 just a miss by a mile compounded by the fact that the
24 tool recommended and selected was inadequate and not

1 Q. So it's possible that Mr. Benson looked

2 at this as the CIO, said it was no good, but it was
3 acquired any way? You leave room for that possibility?

4 A. I don't, I don't know.

5 Q. What's RMS? Is that acronym meaningful
6 to you?

7 A. Yes.

8 Q. What is it?

9 A. I believe it stands for Retail Marketing
10 Systems.

11 Q. Is it an application?

12 A. It's a company.

13 Q. Company that has an application that
14 hosts data?

15 A. It does not host data.

16 Q. What does it do?

17 A. It's a software that sits on top of a
18 database providing analytic capability.

19 Q. Does it do what Aspen was supposed to do?

20 A. No.

21 Q. Is it a successful software?

22 A. Yes.

23 Q. Did you look to acquire RMS?

24 A. Yes.

Page 154

Page 156

1 capable of managing the data sets involved in
2 supermarket transactions. So it had two strikes against
3 it before it even hit the marketplace.

4 Q. Prior to acquiring or beginning the Aspen
5 development program, did anyone from News America
6 Marketing take a look at Aspen's capability to see
7 whether or not it was robust enough to do what was hoped
8 it could?

9 A. Yes.

10 Q. Who?

11 A. The CIO.

12 Q. Who was that?

13 A. David Benson.

14 Q. Did Mr. Benson come to the conclusion
15 that Aspen was robust enough to perform and function as
16 you hoped it would?

17 MR. KATZ: Objection.

18 A. I don't know.

19 Q. Well, you bought it; right?

20 A. Yes.

21 Q. And you don't believe you would have
22 bought it unless Mr. Benson cleared the way; right?

23 MR. KATZ: Objection.

24 A. I don't know.

1 Q. Was it acquired?

2 A. No.

3 Q. Was there an evaluation done in the
4 context of your evaluation as to whether -- strike that.

5 Was there any evaluation done in the
6 marketplace in your effort to acquire RMS?

7 A. The marketplace?

8 Q. Right. A market for the RMS software,
9 did you look at the marketplace before endeavoring to
10 acquire AMS?

11 A. Yes.

12 Q. Did you consult any analysis of the
13 marketplace in the context of determining to acquire
14 RMS?

15 A. Yes.

16 Q. Who conducted the marketplace analysis?

17 A. I'm not certain who specifically
18 conducted the analysis.

19 Q. Was it an outside consultant?

20 A. Internal.

21 Q. Was there a document created that
22 reflected the results of this analysis?

23 A. Yes.

24 Q. Do you remember in substance what the

Page 157

1 document concluded?

2 A. It concluded that while they had a

3 substantial market share they weren't making any money.

4 They were losing money.

5 Q. Was that subsequently -- I should say was

6 RMS subsequently acquired by Valassis?

7 A. Yes.

8 Q. That's one of NAM's competitors?

9 A. Yes.

10 Q. Based on your experience in the

11 marketplace, do you know whether Valassis has profitably

12 used RMS?

13 A. I have no idea.

14 Q. Do you have a copy of this report that

15 was generated on RMS, this evaluation we've been

16 discussing?

17 A. Yes.

18 Q. Could you give that to Mr. Katz?

19 A. Yes.

20 Q. Thank you. Was Ms. Raider allowed to

21 hire employees?

22 A. Yes.

23 Q. She had the autonomy to make job offers?

24 A. She had the autonomy to recommend

Page 158

1 candidates.

2 Q. Were there any hires made for CCMI?

3 A. Yes.

4 Q. Were all open positions filled during

5 your tenure as the head?

6 MR. KATZ: Can I have that question back?

7 (Record read)

8 Q. You can say I don't know.

9 A. I don't know.

10 Q. Were there open positions that Ann Raider

11 had that were never filled?

12 A. I don't know.

13 Q. Were you satisfied that all of the

14 positions that you wanted filled were filled in a timely

15 manner?

16 A. I don't know.

17 Q. We'll talk about Mr. Fireman. He was the

18 president and chief executive officer of CCMI prior to

19 the acquisition; right?

20 A. Yes.

21 Q. News America Marketing agreed that

22 Mr. Fireman would continue as the general manager of the

23 CCMI business unit; correct?

24 A. No.

Page 159

1 Q. Have you ever seen his employment

2 contract?

3 A. Yes.

4 Q. Does his employment contract list his

5 position as general manager?

6 A. Yes.

7 Q. Did he have business cards?

8 A. Yes.

9 Q. Did his business card say general

10 manager?

11 A. Yes.

12 Q. Was he the general manager?

13 A. No.

14 Q. So when you were telling Mr. Fireman to

15 go out and market to companies and sell and develop

16 programs, did you expect that he would be handing out

17 business cards to potential customers and clients?

18 A. Yes.

19 Q. Did you expect that his customers and

20 clients would see him based on his business card as the

21 general manager of CCMI?

22 A. I don't know.

23 Q. Maybe they just wouldn't believe the

24 business card; you didn't leave room for that

Page 160

1 possibility?

2 MR. KATZ: Objection.

3 A. I don't know.

4 Q. But you also had a business card saying

5 general manager, didn't you?

6 A. I did.

7 Q. And you were the general manager of CCMI

8 notwithstanding what Mr. Fireman's business card said;

9 right?

10 A. Yes.

11 Q. Was there ever any discussion within News

12 America Marketing about the wisdom of having two general

13 managers?

14 A. There was discussion about the

15 appropriateness of having Bob's title as general

16 manager.

17 Q. Was it ever changed?

18 A. Couldn't be changed.

19 Q. Why not?

20 A. It was mandated by the contract.

21 Q. So he had the title but not the job

22 responsibilities; is that correct?

23 A. Correct.

24 Q. The employment contract that you read,

Page 161

Page 163

1 did it suggest -- start that again.

2 You read Mr. Fireman's job employment
3 contract?

4 A. I did.

5 Q. And you saw that he would have the title
6 general manager?

7 A. Yes.

8 Q. Do you know whether or not Mr. Fireman
9 was told prior to the acquisition he would, in fact,
10 have the job responsibilities of general manager?

11 A. I have no idea.

12 Q. You've never spoken to anyone about that?

13 A. No.

14 Q. And as general manager of CCMI, what were
15 your job responsibilities? You may have told them all
16 to me already in which case you can tell me that.

17 A. I was responsible for the overall
18 business, profit and loss.

19 Q. That was to have been Bob Fireman's job;
20 right?

21 A. I don't know that to be the case.

22 Q. Okay. Even though he has an employment
23 contract that lists him as general manager, you don't
24 know whether or not Bob Fireman was to be the general

1 A. No.

2 MR. KATZ: Objection.

3 Q. I don't mean to have you go back over
4 testimony. Have you told me the circumstances that lead
5 to the decision to make you general manager?

6 A. There was never a point in time where
7 there was a ceremonial transfer of one general manager
8 to another general manager. So to say that there was
9 some discussion is not accurate. It was an evolutionary
10 process.

11 Q. It wasn't evolutionary when the business
12 card showed up on your desk that said Henri Lellouche,
13 general manager. That was instantaneous; right? You
14 took the title as soon as Dave Devoe left the company?

15 MR. KATZ: Objection.

16 A. I don't know that to be the case.

17 Q. How early on in your tenure with News
18 America Marketing did you become the general manager of
19 CCMI, or SmartSource Direct as it later became?

20 A. I don't know.

21 Q. When you came on board to head up CCMI,
22 were there already complaints about Bob Fireman as a
23 manager?

24 A. I don't know.

Page 162

Page 164

1 manager of CCMI?

2 A. I do not know that.

3 MR. KATZ: Asked and answered.

4 Q. Did you or anyone else at NAM have any
5 conversation with Bob Fireman before taking the role of
6 general manager away from him and giving it to you?

7 A. Say that again, please.

8 Q. Before you took Bob Fireman's job as
9 general manager, did you talk to him about it?

10 MR. KATZ: Objection.

11 A. I did not talk to him about it.

12 Q. Before you took Bob Fireman's job as
13 general manager, did anyone else at News America
14 Marketing talk to him about that decision?

15 A. I don't know.

16 Q. Do you know whether anyone at News
17 America Marketing ever got Bob Fireman's permission to
18 take away his job responsibilities as general manager?

19 MR. KATZ: Objection.

20 A. I don't know.

21 Q. Do you think News America had an
22 obligation to speak with Bob Fireman about taking away
23 his job responsibilities as general manager before doing
24 that?

1 Q. In the context of conducting due
2 diligence on acquiring CCMI, was it important to
3 understand the human capital you were acquiring; in
4 other words, understand who Bob Fireman was as a person,
5 who Ann Raider was as a person?

6 A. As much as you can do so in a due
7 diligence process, yes.

8 Q. So in that context you talked to
9 employees?

10 A. I did not.

11 Q. Do you know whether or not Mr. Rubin or
12 anyone else did on behalf of News America Marketing?

13 A. I don't know.

14 Q. Do you think that would have been a
15 prudent thing to do?

16 A. I don't know.

17 Q. You don't know whether or not the
18 employees thought Bob Fireman was a good and fair man
19 and an excellent manager, do you?

20 A. I don't know.

21 Q. What was the business justification for
22 taking Bob Fireman's title as general manager away from
23 him and giving it to you?

24 A. It was never taken away from him.

Page 165

1 Q. What was the business justification of
 2 giving you the title of general manager when Bob Fireman
 3 continued to have that title at least on his employment
 4 contract and business card?
 5 A. I was, in fact, the general manager.
 6 Q. What was the business justification for
 7 making you the general manager rather than Bob Fireman
 8 remaining general manager?
 9 A. It was the discretion of the company to
 10 put me in charge of the entire business.
 11 Q. Other than discretion can you justify it
 12 from a business perspective; how did it make sense?
 13 A. You'd have to ask people above me about
 14 that.
 15 Q. Did you ever talk to them before it
 16 occurred?
 17 A. Certainly through discussions I intimated
 18 to them how I felt the business was being run.
 19 Q. This was before you took the general
 20 manager title or after?
 21 A. I'm not sure.
 22 Q. Is the job of general manager of CCMi a
 23 job that you lobbied for?
 24 A. No.

Page 166

1 Q. It was thrust upon you?
 2 A. I was asked to do it.
 3 Q. You didn't inquire ahead of time about
 4 whether or not the job was or could be open?
 5 A. No.
 6 Q. When you say you discussed the management
 7 of or the management skills/style of Bob Fireman, with
 8 whom did you discuss them above you?
 9 A. With my supervisors.
 10 Q. Mr. Mixon?
 11 A. Mr. Devoe.
 12 Q. Those two?
 13 A. At the very least.
 14 Q. But you can't place those discussions in
 15 time?
 16 A. I cannot.
 17 MR. PETERS: Go off the record.
 18 (Recess taken)
 19 BY MR. PETERS:
 20 Q. Mr. Lellouche, are you aware that
 21 Mr. Carlucci said at some point that he saw no future in
 22 targeted direct mail?
 23 MR. KATZ: Objection.
 24 A. I was not present at any conversation

Page 167

1 like that.
 2 Q. Have you heard from anyone that
 3 Mr. Carlucci had said in substance that he does not see
 4 a future in targeted direct mail?
 5 MR. KATZ: Objection.
 6 A. Only from Bob and Ann.
 7 Q. Not from any other News America employee?
 8 A. No.
 9 Q. At some point the CCMi offices moved to
 10 the Hancock Tower?
 11 A. Yes.
 12 Q. Was that after you took over as the head?
 13 A. On or about.
 14 Q. Were you involved in that decision?
 15 A. No.
 16 Q. Who made that decision?
 17 A. Senior management.
 18 Q. Did you participate in any way in that
 19 decision?
 20 A. No.
 21 Q. Was it just something that was told to
 22 you at one time?
 23 A. Yes.
 24 Q. In other words, senior management said

Page 168

1 we're going to move?
 2 A. Yes.
 3 Q. Did they give you the business
 4 justification for moving?
 5 A. No.
 6 Q. Was there one that you know of?
 7 A. I'm not aware of any.
 8 Q. Was that space that News America
 9 Marketing already occupied?
 10 A. I don't know.
 11 Q. Do you know whether or not Ann Raider or
 12 Bob Fireman were consulted by the wisdom of moving
 13 space?
 14 A. I don't know.
 15 Q. Do you know whether or not any part of
 16 the overhead at the Hancock Tower was charged against
 17 CCMi's revenue?
 18 A. It was charged against CCMi's P&L, yes.
 19 Q. Okay. That affected the earn-out
 20 potential?
 21 A. I don't know.
 22 Q. Did News America Marketing entertain
 23 potential clients at the office space?
 24 A. Yes.

LELLOUCHE-5/25/07

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Page 169

Page 171

1 Q. At the Hancock building?
 2 A. Yes.
 3 Q. How often were potential clients
 4 entertained/met with/solicited at the Hancock Tower?
 5 A. I don't know.
 6 Q. Did you have office space there?
 7 A. No.
 8 Q. Where was your office space?
 9 A. My office space was in Connecticut.
 10 Q. So you were running --
 11 A. And Manhattan.
 12 Q. You were running the Softcard and the
 13 CCMi businesses from those places?
 14 A. Yes.
 15 Q. Do you know whether or not prior to the
 16 acquisition CCMi attended trade shows and had speaking
 17 engagements, specifically Ann Raider and Bob Fireman, to
 18 promote their business?
 19 A. I do know.
 20 Q. You do. Did they?
 21 A. Yes.
 22 Q. After the acquisition was Ann Raider
 23 allowed to go to trade shows?
 24 A. Yes.

1 Q. What was the business justification from
 2 precluding CCMi from exhibiting at trade shows?
 3 A. News America's policy is not to exhibit
 4 at trade shows or participate in trade associations.
 5 Q. Do you know the justification for that
 6 policy?
 7 A. I do not.
 8 Q. Have you ever inquired?
 9 A. No.
 10 Q. When Ann Raider asked to exhibit at trade
 11 shows your response in substance was what you just told
 12 me, which is it's the policy?
 13 A. Yes.
 14 Q. Did you ever explore with senior
 15 management the idea that it might be prudent in this
 16 emerging market to allow CCMi to exhibit at trade shows?
 17 A. No.
 18 Q. Do you think that would have been a
 19 rational thing to do to explore whether or not News
 20 America Marketing's policy made sense in the context of
 21 emerging technologies?
 22 A. No.
 23 Q. You don't think that made sense?
 24 A. No.

Page 170

Page 172

1 Q. Was there any curtailment on the trade
 2 shows that she could attend in order to promote CCMi's
 3 business?
 4 MR. KATZ: Objection.
 5 A. No. In fact, she served on the FMI
 6 Women's Council which met, I believe, in concurrence
 7 with the trade shows.
 8 Q. So you don't remember any complaints that
 9 Ann Raider had about the inability to exhibit at shows?
 10 A. Well, that's two different questions.
 11 Q. It may be which is why my client just
 12 passed me a note. Was Ann Raider and Bob Fireman, more
 13 specifically CCMi, allowed to exhibit at trade shows?
 14 A. We exhibited in 2001 at Marketechnics,
 15 and that was the last opportunity we had to exhibit at a
 16 trade show.
 17 Q. You don't recall Ann Raider complaining
 18 that she wanted to exhibit at trade shows but was
 19 precluded from doing so?
 20 A. No, that was not the question.
 21 Q. But that's the question I'm asking now.
 22 Do you remember Ann Raider complaining that she was
 23 precluded from exhibiting at trade shows?
 24 A. Frequently.

1 Q. Why not?
 2 A. It was a News America policy that was
 3 explained very clearly to me, and it was
 4 counterproductive for me to challenge management on this
 5 decision.
 6 Q. Every time someone asks for some
 7 additional consideration on the matter, do you consider
 8 that to be a challenge?
 9 A. No.
 10 Q. There is a way for you to go to senior
 11 management and say maybe we should revisit this policy
 12 in light of the fact that we're dealing with an emerging
 13 technology and have that not be a challenge; right?
 14 MR. KATZ: Objection.
 15 A. I can't speak generally about it.
 16 Q. But you didn't approach senior management
 17 because you didn't want to challenge senior management;
 18 right?
 19 A. That's not the case.
 20 Q. I'm using the word challenge because it
 21 came up in the response that you just gave me. Did you
 22 consider raising the issue but declined to raise the
 23 issue because you were afraid or concerned that it would
 24 be viewed as a challenge to an existing policy?

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LELLOUCHE-5/25/07

Page 173

Page 175

1 A. I did not challenge it because I believed
2 it was the policy of the company. It was stated clearly
3 to me and did not need to be reinforced.

4 Q. And you thought it made sense in this
5 context?

6 A. That's not relevant.

7 Q. Whether or not it makes sense is
8 irrelevant to you?

9 A. I follow the policies of News America
10 Marketing, and I expected the people that work for me to
11 follow those policies as well.

12 Q. Did you ever inquire into the
13 justification of the policy?

14 A. No.

15 Q. You didn't think that was a prudent thing
16 to do to try to find out whether or not the
17 justifications that supported the policy applied in this
18 context?

19 A. It was a longstanding policy that had no
20 exception.

21 Q. That you know of?

22 A. I'll stipulate to that.

23 Q. And speaking engagements, we'll talk
24 about those in a minute, but you mentioned that News

1 Q. So as best you can put it together,
2 Mr. Rubin asked senior management to make an exception
3 to the NAM policy that otherwise precluded exhibiting at
4 trade shows?

5 MR. KATZ: Objection.

6 A. I don't know that to be case.

7 Q. But you do know that you exhibited at
8 this one trade show?

9 A. I do know that we exhibited at this trade
10 show.

11 Q. And you never inquired of anyone as to
12 why an exception to the rule or policy was made, did
13 you?

14 A. No.

15 Q. You mentioned it was part of a plan.
16 What plan are you referring to?

17 A. To introduce the Aspen product to the
18 marketplace.

19 Q. Didn't that come about a year after
20 Mr. Rubin left, the introduction of Aspen?

21 A. Say again.

22 Q. The introduction of the Aspen product
23 into the marketplace was about a year after Mr. Rubin
24 left; right?

Page 174

Page 176

1 America allowed CCMI to exhibit at a trade show in 2001;
2 correct?

3 A. Hold on a second. I'm trying to think of
4 the last trade show that we exhibited at and I'm losing
5 track of my time line. I can't remember if the last one
6 we attended was in 2000 or 2001.

7 Q. Was that an exception to the policy
8 you've been testifying to?

9 A. Yes.

10 Q. How did you get the exception?

11 A. It was part of the, it was part of the
12 plan to exhibit at the trade show. It was a situation
13 where we were launching this Aspen product where we
14 wanted to get a large amount of exposure, and we did
15 attend that trade show.

16 Q. Who gave you permission?

17 A. Upper management.

18 Q. Did you ask for it?

19 A. No.

20 Q. Who did?

21 A. That was prior to my taking over.

22 Q. So that would have been Mr. Rubin?

23 A. I would say yes, he would have been
24 involved at the budget time.

1 A. I don't know if it was exactly a year,
2 but it was after he left.

3 Q. But the trade show introducing Aspen was
4 before; is that your testimony or recollection?

5 A. The trade show was after he left but
6 before the product was released to the marketplace. It
7 was on display at the trade show.

8 Q. So when this trade show took place and
9 when CCMI exhibited you were heading up CCMI as general
10 manager?

11 A. No, Bob was still running the group.

12 Q. So this was sometime within the four,
13 sometime within the four months after the acquisition of
14 CCMI?

15 A. Well, this was a Marketechnics trade
16 show, I believe, that took place in New Orleans if my
17 recollection is correct. The reason I say that Bob was
18 still running the operations was that Mike Cleary was on
19 board just to orchestrate the details of the trade show.
20 He was not running the operations group.

21 Q. Did you have the title general manager of
22 CCMI or SmartSource Direct at the time the trade show
23 took place?

24 A. I don't know.

LELLOUCHE-5/25/07

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Page 177

Page 179

1 Q. Did News America Marketing have a policy
2 on speaking engagements?
3 A. I don't know that there's a formal
4 policy.
5 Q. Did Ms. Raider or Mr. Fireman complain
6 about not being able to undertake speaking engagements
7 so that they could raise visibility about CCMi's
8 products and services?
9 A. Yes.
10 Q. And were those complaints justified in
11 your view?
12 A. I can't say.
13 Q. Did you consider whether or not their
14 complaints had merit?
15 A. Ann did speak at trade show events.
16 Q. But she nevertheless complained to you
17 about the inability to speak at various engagements?
18 A. She did speak at various engagements.
19 She did join the FMI Women's Forum. I don't understand
20 the question.
21 Q. Let me put a finer point on it. Did she
22 complain about being curtailed from speaking
23 engagements?
24 A. I don't know that she complained about

1 Q. It's irrelevant, in other words, one way
2 or the other?
3 A. Yes.
4 Q. Same question with speaking engagements,
5 you don't think those have any relevance to growing
6 CCMi's business; is that a fair statement?
7 A. I never said that.
8 Q. Do you believe it?
9 A. I don't.
10 Q. You think it's relevant to growing a
11 business?
12 A. I think that speaking engagements
13 properly utilized are productive.
14 Q. Were there any speaking engagements that
15 you declined to allow Ann Raider to participate in or
16 engage?
17 A. None that I can recall.
18 Q. Now, trade advertising is an important
19 part of growing a business in your experience?
20 MR. KATZ: Objection. You're talking
21 about any business?
22 Q. Yes, in his experience, his long
23 experience in a variety of businesses, is trade
24 advertising one of the ways that an emerging business

Page 178

Page 180

1 being curtailed because she was doing them.
2 Q. That's my question. You don't have a
3 memory of that being an issue to Ann Raider?
4 A. No.
5 Q. That's my question. You don't remember
6 that being an issue to Bob Fireman?
7 A. I never knew of Bob to speak at any
8 engagement.
9 Q. So that's no, too?
10 A. Pardon me?
11 Q. That's also no? In other words, no, you
12 don't remember Bob complaining; no, you don't remember
13 Ann complaining; right?
14 A. Right.
15 Q. Would you agree that exhibiting at trade
16 shows is consistent with the goal of growing CCMi's
17 business?
18 MR. KATZ: Objection.
19 A. No.
20 Q. Would you believe that exhibiting at
21 trade shows is inconsistent with the goal of growing
22 CCMi's business?
23 MR. KATZ: Objection.
24 A. No.

1 develops?
2 A. Not necessarily.
3 Q. Not necessarily?
4 A. No.
5 Q. Was CCMi allowed to advertise in trade
6 publications?
7 A. No.
8 Q. Why not?
9 A. News America doesn't advertise in trade
10 publications.
11 Q. News America Marketing, News America,
12 News Corp.?
13 A. News America Marketing.
14 Q. That's a policy?
15 A. Yes.
16 Q. And that policy was explained to Ann
17 Raider and Bob Fireman prior to the acquisition?
18 A. I don't know.
19 Q. Did Ann Raider approach you about
20 advertising in trade publications?
21 A. I don't have any specific recollection of
22 that.
23 Q. Do you have any specific recollection of
24 Bob Fireman approaching you about advertising in trade

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LELLOUCHE-5/25/07

Page 181

Page 183

1 publications?

2 A. I don't have any specific recollection of

3 that either.

4 Q. Did you ever go to senior management to

5 try to determine whether or not in this particular case;

6 that is, the case of CCMI or SmartSource Direct, it made

7 sense to raise awareness about the company and its

8 offerings by publishing advertising in trade journals?

9 A. Say it again, please.

10 Q. Did you ever approach senior management

11 and say in substance maybe we should advertise?

12 A. No.

13 Q. And that's because of this existing

14 policy that was explained to you?

15 A. Yes.

16 Q. Did you think it made sense in the

17 context of CCMI's business to keep it out of trade

18 journals?

19 MR. KATZ: Objection to form.

20 A. Can you say that again, please.

21 Q. Did you think it made sense in this

22 particular context, the context of CCMI, to preclude it

23 from advertising in trade journals?

24 A. It wasn't my call to make. It was a

1 point on that, the sales force at the iGroup. Was there

2 an entity called Sales Force.com? Sales Force.com.

3 SmartSource.com, thank you, Ann.

4 A. Yes.

5 Q. SmartSource.com had its own sales force?

6 A. Initially, yes.

7 Q. And what were they selling?

8 A. They were selling Internet couponing.

9 Q. At some point did SmartSource.com sales

10 representatives sell CCMI products and services?

11 A. Not that I can recall.

12 Q. Do you recall --

13 A. Again, there were no services to be sold

14 to speak of other than very small niche opportunities

15 around the country. It was not that there was this

16 plethora of products that Ann or Bob had created for the

17 CPG sales force to sell. Nothing existed except the ad

18 hoc direct mail program every now and then or the ad hoc

19 film promotion that Ann would generate that would

20 generally speaking produce little to no revenue.

21 Q. Take a look at Exhibit 1 where it says,

22 Opportunity for News America Marketing and CCMI.

23 A. Are we still on this document?

24 MR. KATZ: We're coming back to it.

Page 182

Page 184

1 senior management call to make.

2 Q. But you were running CCMI; right?

3 A. On behalf of News America Marketing.

4 Q. I understand, but I'm asking you, sir, as

5 a senior vice-president, which was your title?

6 A. Right.

7 Q. Did you think as a senior vice-president

8 that policy made sense in this context?

9 A. My role as a senior vice-president was to

10 follow the policies of senior management.

11 Q. And not to question?

12 A. No.

13 Q. Am I right?

14 A. You're right.

15 Q. So you don't have an opinion as to

16 whether or not it made sense to advertise this emerging

17 technology in trade journals?

18 A. I have no opinion about that.

19 Q. And you never considered the wisdom of

20 doing it because of the policy that you say was in place

21 at News America Marketing; right?

22 A. Right.

23 Q. Let's talk a little bit about the sales

24 force at News America Marketing. Let me put a sharper

1 Which page of the document?

2 Q. Page two.

3 A. Page two.

4 MR. KATZ: What are we looking at?

5 Q. Opportunity for News America Marketing

6 and CCMI. First bullet point says, Full service

7 provider. CCMI's consulting and marketing services are

8 strategically important because the company offers

9 highly targetable promotion services not readily

10 available in the retail marketplace today.

11 So when Mr. Devoe wrote this document and

12 sent it to Mr. Carlucci, among others, did you think

13 that was not true?

14 MR. KATZ: Objection. Did Mr. Devoe

15 think it was not true; is that what you're asking?

16 Q. I'm asking whether or not you, sir, based

17 on what you now know of CCMI's business believe that

18 what Mr. Devoe is representing in this memorandum is

19 inaccurate, and I'm reading one bullet point that says,

20 Full service provider, that first sentence which you can

21 read to yourself, was that accurate when you

22 presented --

23 A. Slow down. I really don't know what

24 context Mr. Devoe is writing in here. If I had authored

LELLOUCHE-5/25/07

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Page 185	Page 187
<p>1 this I could give you more insight. It's hard for me to</p> <p>2 say what he was speaking of.</p> <p>3 Q. Who is John Nallen?</p> <p>4 A. John Nallen is the deputy CFO of News</p> <p>5 Corporation.</p> <p>6 Q. And who's Lon Jacobs?</p> <p>7 A. Lon Jacobs is the corporate counsel for</p> <p>8 News Corporation.</p> <p>9 Q. And Mr. Carlucci is who?</p> <p>10 A. He's the --</p> <p>11 Q. Or was at the time?</p> <p>12 A. At the time he was the, he is and was the</p> <p>13 chairman and CEO of News America Marketing.</p> <p>14 Q. And David Devoe at the time was on your</p> <p>15 team?</p> <p>16 A. David Devoe was a CFO of News America</p> <p>17 Marketing.</p> <p>18 Q. And you don't know therefore when we take</p> <p>19 a look at the first bullet point whether or not the</p> <p>20 things Mr. Devoe says to News America and News America</p> <p>21 Marketing, News Corp. and News America Marketing, are</p> <p>22 true?</p> <p>23 A. I did not author this document. I don't</p> <p>24 know what was in his head when he was writing it. I</p>	<p>1 asking whether or not he thinks it's a true statement.</p> <p>2 You're coaching and this witness doesn't need it.</p> <p>3 MR. KATZ: Are you asking him now as he</p> <p>4 sits here in 2007 what he thinks or what he thought in</p> <p>5 1999?</p> <p>6 MR. PETERS: I'll ask it this way.</p> <p>7 Q. At the time this document was ostensibly</p> <p>8 prepared in May of 1999, do you believe it was true that</p> <p>9 News America's strong relationships with supermarket</p> <p>10 retailers and consumer packaged goods manufacturers</p> <p>11 offered significant expansion opportunities for CCMI?</p> <p>12 Do you think that was a true statement?</p> <p>13 A. Yes.</p> <p>14 Q. And do you think that News America has</p> <p>15 strong relationships with -- do you presently believe</p> <p>16 that News America has strong relationships with</p> <p>17 supermarkets?</p> <p>18 A. Yes.</p> <p>19 Q. Do you presently believe that News</p> <p>20 America has strong relationships with consumer packaged</p> <p>21 goods manufacturers?</p> <p>22 A. Yes.</p> <p>23 Q. The next bullet point speaks of targeted</p> <p>24 market expertise. It says, CCMI's management expertise</p>
Page 186	Page 188
<p>1 don't know what he was trying to convey.</p> <p>2 Q. Did CCMI have consulting and marketing</p> <p>3 services that were strategically important?</p> <p>4 A. To the CPG community?</p> <p>5 Q. Generally.</p> <p>6 A. They had consulting services where they</p> <p>7 worked with retailers and marketing services where Ann</p> <p>8 worked with retailers. They did small, very low revenue</p> <p>9 highly niche direct mail programs at the time and that</p> <p>10 was the extent of it.</p> <p>11 Q. Did they offer highly targetable</p> <p>12 promotion services not readily available in the retail</p> <p>13 marketplace?</p> <p>14 A. Yes.</p> <p>15 Q. At the time they did. Under retail</p> <p>16 expansion opportunities, did you think it was the case</p> <p>17 that News America's strong relationships with</p> <p>18 supermarket retailers and customer packaged goods</p> <p>19 manufacturers offered significant expansion</p> <p>20 opportunities for CCMI; did you think that was a true</p> <p>21 statement to News Corp.?</p> <p>22 MR. KATZ: Wait a minute. He didn't</p> <p>23 author this document.</p> <p>24 MR. PETERS: I didn't say he did. I'm</p>	<p>1 and specialized software will be an asset to News</p> <p>2 America Marketing as it attempts to grow its in-store</p> <p>3 portfolio of highly-targeted promotion services.</p> <p>4 When that statement was drafted and sent</p> <p>5 off to News Corp. and the chairman of News America</p> <p>6 Marketing, do you think that that was true?</p> <p>7 MR. KATZ: Objection.</p> <p>8 A. I don't know what Mr. Devoe was referring</p> <p>9 to here. I didn't author this document.</p> <p>10 Q. You don't know what he means where he</p> <p>11 writes management expertise? That's not a concept</p> <p>12 familiar to you?</p> <p>13 A. I don't know what he's referring to there</p> <p>14 specifically.</p> <p>15 Q. Do you believe that CCMI had management</p> <p>16 expertise?</p> <p>17 A. When?</p> <p>18 Q. May 14, 1999.</p> <p>19 A. I wasn't involved in this business then.</p> <p>20 Q. Did you pitch this opportunity to the</p> <p>21 board of directors for News Corp.?</p> <p>22 A. As I said before, this was David</p> <p>23 Devoe's -- this was John Rubin's deal. I was involved</p> <p>24 in the Softcard business.</p>

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LELLOUCHE-5/25/07

Page 189

Page 191

1 Q. There was a presentation to the board of
2 News Corp., wasn't there?
3 A. Yes, there was.
4 Q. There was a presentation to the board of
5 News America Marketing, wasn't there?
6 A. Yes.
7 Q. You attended both of those?
8 A. Mm-hmm.
9 Q. And nothing that was said to either board
10 was false, correct, as best you can recall?
11 A. Yes.
12 Q. Now, did CCMi have management expertise
13 at the time you pitched them --
14 A. I did not speak to their management
15 expertise at these meetings.
16 Q. Well, sir, when your team pitched this to
17 two boards, did you believe that CCMi had management
18 expertise?
19 A. Certainly was represented that way.
20 Q. What did you believe?
21 A. I believed that they had been in business
22 for quite a while.
23 Q. And that's what you said to the boards?
24 You said this is a good opportunity because Bob Fireman

1 false?
2 MR. KATZ: Objection.
3 A. I don't know what Mr. Devoc was referring
4 to here. So I can't, I can't represent what he's
5 discussing.
6 Q. You don't know what he means by
7 specialized software; right?
8 A. What is that?
9 Q. You don't know; right? I guess that's my
10 question.
11 A. It's not identified. I don't know.
12 Q. Given the work you did on this
13 transaction and given your effort to have a level of
14 understanding sufficient to allow you to recommend this
15 as an investment, you still can't tell me what
16 specialized software CCMi had at the time News America
17 Marketing acquired it; right? That's your testimony?
18 MR. KATZ: I think that's a different
19 question.
20 A. Please say that again because I'm going
21 to stay with what I said before. I don't know what
22 specialized software is. I didn't make the ultimate
23 recommendation on acquiring this business. I did not do
24 the due diligence on this business except for in the

Page 190

Page 192

1 and Ann Raider, they have been in business for a while;
2 is that how you pitched it?
3 A. I don't know that I referred to Bob and
4 Ann. I referred to CCMi.
5 Q. Didn't you say to the boards that were
6 expecting to invest in this opportunity that CCMi had
7 management expertise; isn't that what you said and your
8 team said?
9 MR. KATZ: Objection.
10 A. I don't recall ever saying anything like
11 that.
12 Q. And you didn't believe it?
13 MR. KATZ: Objection.
14 A. I didn't know.
15 Q. You didn't know. This bullet point
16 continues on Exhibit 1 that CCMi's specialized software
17 will be an asset to News America Marketing. Is that
18 something that you recall representing to the board of
19 News Corp. and the board of News America Marketing?
20 A. No.
21 Q. Did you believe it?
22 A. No.
23 Q. Do you think that notwithstanding the
24 fact that it's contained within this Exhibit 1 that is

1 initial phase.
2 MR. PETERS: Can you read the last
3 question, please, and if you can answer it yes or no I'd
4 appreciate that.
5 (Record read)
6 A. What is the question?
7 Q. I just read it. Do you want to hear it
8 again? If you don't understand the question, sir, I'll
9 ask it again.
10 A. Please ask it again.
11 Q. Okay. Notwithstanding the fact that you
12 presented this opportunity to the board of News Corp.
13 and the board of News America Marketing, you with me so
14 far; right?
15 A. Yes.
16 Q. Notwithstanding that are you telling me
17 that you don't have enough knowledge or didn't have
18 enough knowledge about CCMi's business to tell me what
19 specialized software they had?
20 MR. KATZ: Objection.
21 A. I do not.
22 Q. Okay. Did any part of the News America
23 Marketing sales force ever receive training in CCMi's
24 products or services?

LELLOUCHE-5/25/07

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Page 193	Page 195
<p>1 A. Through Kevin Tripp's efforts perhaps,</p> <p>2 yes.</p> <p>3 Q. Do you know of them?</p> <p>4 A. I know that he went out and did joint</p> <p>5 calls with the sales force.</p> <p>6 Q. Was there ever any information package</p> <p>7 put together so that the sales force of News America</p> <p>8 Marketing could understand CCMi's product lines?</p> <p>9 A. Again, there was no product. Tell me</p> <p>10 what product that the CPG sales force was to represent.</p> <p>11 Q. No, actually, sir, the way this process</p> <p>12 works is I ask you questions.</p> <p>13 A. I understand that.</p> <p>14 Q. That's not clear to me, so I wanted to</p> <p>15 make that point. What I'm asking you, sir, is -- and</p> <p>16 you may answer no -- was there an effort, an organized</p> <p>17 effort made to train the sales force about what CCMi had</p> <p>18 to offer?</p> <p>19 A. If they had anything to offer it would</p> <p>20 have been represented. They had nothing to offer.</p> <p>21 Q. From what are you generating eight</p> <p>22 million dollars of revenue today at CCMi?</p> <p>23 A. Direct mail.</p> <p>24 Q. Using what?</p>	<p>1 A. I would say that that was not their</p> <p>2 business, direct mail predominantly, during the term of</p> <p>3 their agreement.</p> <p>4 Q. Sir, generating the information that</p> <p>5 allows you to put a flier, a coupon, and program in an</p> <p>6 envelope and mail it to a specific customer based on</p> <p>7 that customer's specific buying habits, that was CCMi's</p> <p>8 business, generating the data that allows or now allows</p> <p>9 News America Marketing to do direct marketing, wasn't</p> <p>10 that their business?</p> <p>11 MR. KATZ: Objection.</p> <p>12 A. I disagree.</p> <p>13 Q. Where do you think News America Marketing</p> <p>14 gets its data that allows it to do targeted direct</p> <p>15 marketing? Does it get it from the point of sale?</p> <p>16 A. Yes. No, we don't. We get it from the</p> <p>17 retailer.</p> <p>18 Q. Where do the retailers get it from?</p> <p>19 A. The point of sale.</p> <p>20 Q. And that's an eight million dollar</p> <p>21 business today to News America?</p> <p>22 A. Yes.</p> <p>23 Q. Was that one of CCMi's products?</p> <p>24 A. Yes.</p>
Page 194	Page 196
<p>1 MR. KATZ: Objection.</p> <p>2 A. I don't understand the question.</p> <p>3 Q. You're making eight million dollars doing</p> <p>4 targeted direct mail --</p> <p>5 A. Yes.</p> <p>6 Q. -- using the CCMi business model; in</p> <p>7 other words, information generated at the point of sale</p> <p>8 and used for targeted marketing?</p> <p>9 A. I would not agree to call it the CCMi</p> <p>10 business model. I certainly didn't need CCMi to get</p> <p>11 into the direct mail business.</p> <p>12 Q. You weren't in the business of using</p> <p>13 information generated at the point of sale to do</p> <p>14 targeted marketing until you acquired CCMi; right?</p> <p>15 A. Yes.</p> <p>16 Q. And the eight million dollars in revenue</p> <p>17 that you testified to earlier in your deposition, that's</p> <p>18 eight million dollars in revenue generated by targeted</p> <p>19 direct mail?</p> <p>20 A. Yes.</p> <p>21 Q. Based on information generated at the</p> <p>22 point of sale?</p> <p>23 A. Yes.</p> <p>24 Q. Which was CCMi's business?</p>	<p>1 Q. When you say over and over and over again</p> <p>2 that CCMi had no products, have we justified at least</p> <p>3 one?</p> <p>4 A. Not that I would have a 150 percent sales</p> <p>5 force represent in 1999 when you had a handful of</p> <p>6 retailers with data available. As I said, it's</p> <p>7 emerging. It hadn't emerged.</p> <p>8 Q. It was News America's hope that they</p> <p>9 would develop that market further?</p> <p>10 A. I wouldn't say that's true.</p> <p>11 Q. Okay. News America as far as you know</p> <p>12 wasn't really concerned about developing the market that</p> <p>13 now generates eight million dollars?</p> <p>14 A. No, they were not.</p> <p>15 Q. How many stores had card programs in</p> <p>16 2001?</p> <p>17 A. I haven't the slightest idea.</p> <p>18 Q. Isn't that something that's important for</p> <p>19 you to know before you run a business?</p> <p>20 A. You're asking me 1999?</p> <p>21 Q. I'm asking 2001, right now, eighteen</p> <p>22 thousand stores?</p> <p>23 A. I have no idea.</p> <p>24 Q. How many stores have loyalty cards</p>

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LELLOUCHE-5/25/07

Page 197

Page 199

1 presently?
 2 A. Tens of thousands.
 3 Q. All of them generating data?
 4 A. Not all of them.
 5 Q. Most of them?
 6 A. Many.
 7 Q. That allow for direct market programs?
 8 A. Yes, mm-hmm.
 9 Q. We spoke a little bit about the E.Piphany
 10 software earlier in your deposition. How much was CCMI
 11 charged for the E.Piphany software that was ultimately
 12 acquired?
 13 A. I don't know.
 14 Q. Were you involved in allocating the
 15 expenses?
 16 A. No.
 17 Q. Who was?
 18 A. Finance.
 19 Q. Pardon me?
 20 A. Finance and accounting and possibly the
 21 CIO.
 22 Q. Were you involved in collecting accounts
 23 receivable for CCMI?
 24 A. No.

Page 198

1 Q. That wasn't one of your responsibilities
 2 as general manager?
 3 A. No.
 4 Q. Who was responsible for that?
 5 A. The collections department.
 6 Q. Were there complaints registered by Ann
 7 and Bob about the efforts to collect receivables for
 8 CCMI?
 9 A. Not to me.
 10 Q. Do you know anything about that issue,
 11 the issue of accounts receivable?
 12 A. No.
 13 Q. And the collection thereof?
 14 A. (Shaking head).
 15 Q. Was there a hiring freeze in 2000?
 16 A. Yes.
 17 Q. Did that impact CCMI's business?
 18 A. In terms of hiring people?
 19 Q. Yes.
 20 A. Obviously, yes.
 21 Q. Well, it's only obvious if there were
 22 people that needed to be hired. Were there people that
 23 needed to be hired that couldn't be hired because of a
 24 freeze?

1 A. Yes.
 2 Q. Who and for what positions?
 3 A. I don't remember.
 4 Q. How many?
 5 A. I don't know.
 6 Q. Did it impact the bottom line of CCMI?
 7 A. Doubtful.
 8 Q. Do you know whether it did?
 9 A. I don't know.
 10 Q. Was a part-time sales staff used to make
 11 up the lack of a sales force incident to a hiring
 12 freeze?
 13 A. I have no recollection of that.
 14 Q. Did Ann Raider or Bob Fireman complain
 15 about a lack of administrative support to you?
 16 A. Yes.
 17 Q. Did you think their complaints were
 18 justified?
 19 A. No.
 20 Q. Why not?
 21 A. I thought that the head count -- I
 22 thought that the staffing was commensurate with the
 23 performance of the division.
 24 Q. Did NAM commit to hiring people

Page 200

1 sufficient to grow CCMI's business?
 2 A. I don't know.
 3 Q. Do you know a gentleman by the name of
 4 Bill Adam, A D A M?
 5 A. I do.
 6 Q. Was he employed by CCMI when it was
 7 acquired by News America Marketing?
 8 A. Yes.
 9 Q. Did you speak with Mr. Adam when you met
 10 with Bob Fireman to learn about his business prior to
 11 the acquisition?
 12 A. When I visited the Braintree office I did
 13 meet Bill Adam.
 14 Q. What was your understanding about his
 15 role at CCMI?
 16 A. He was a technical person.
 17 Q. Was he held out to you by either Ann
 18 Raider or Bob Fireman as one of the three creative team
 19 members at CCMI, the other two being Ann and Bob?
 20 A. They spoke very fondly of him.
 21 Q. Did you understand that he was an
 22 integral part of CCMI's business?
 23 MR. KATZ: Objection.
 24 A. I did not understand that.

LELLOUCHE-5/25/07

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Page 201

Page 203

1 Q. Did you ever come to the conclusion that
2 Bill Adam was an integral part of CCMi's business?

3 MR. KATZ: Objection.

4 Q. Either prior to or after the acquisition?

5 A. No.

6 Q. Did you believe he was?

7 MR. KATZ: Same objection.

8 A. No.

9 Q. Do you remember that he was making eighty
10 thousand or approximately eighty thousand dollars a year
11 at CCMi?

12 A. I don't know.

13 Q. Was there any conversation that you had
14 with Ann Raider about getting Bill Adam a pay raise?

15 A. I don't recall.

16 Q. Do you remember that Bill Adam was moved
17 to Connecticut at some point?

18 A. Yes.

19 Q. Were you involved in the decision to move
20 him to Connecticut?

21 A. Yes.

22 Q. What was your role?

23 A. My role was to get him closer to the IT
24 people who were developing the Aspen product so he could

1 Q. You feared flight because of something
2 Bill Adam said to you?

3 A. Yes.

4 Q. What did he say?

5 A. He didn't want to be there anymore.

6 Q. When did he say this to you?

7 A. Probably concurrent with the time we were
8 having discussions about moving him.

9 Q. What did he say as best you can recall?

10 A. I don't think he enjoyed being in that
11 environment anymore.

12 Q. He said, I don't enjoy being in this
13 environment?

14 A. You're asking me what I thought.

15 Q. I'm asking you what he said?

16 A. I don't know what he said.

17 Q. He told you he was going to leave?

18 A. I was getting the impression that he was
19 looking and that he was going to move on.

20 Q. Well, you knew he wanted a raise; right?

21 A. I don't remember that.

22 Q. What did he say to you that made you
23 believe that he was tired of working with Ann and Bob
24 and wanted to leave them?

Page 202

Page 204

1 be co-located with them to facilitate the deployment of
2 that product.

3 Q. Did you discuss that decision with Ann
4 Raider or Bob Fireman before implementing it?

5 A. I don't recall.

6 Q. Do you recall ever soliciting their input
7 of the wisdom or insight of breaking up that team?

8 MR. KATZ: Objection.

9 A. No.

10 Q. Did Ann Raider tell you that Bill Adam
11 was a critical part of the CCMi team in words or
12 substance?

13 A. No.

14 Q. Did Bob Fireman tell you that Bill Adam
15 was a critical part of the CCMi team in words or
16 substance?

17 MR. KATZ: At any point in time?

18 Q. Prior to moving him off to Connecticut?

19 A. He may have.

20 Q. Did you explore whether or not he was a
21 critical part of the CCMi team?

22 A. I observed that he was a critical part of
23 the CCMi team. One of the reasons I wanted to get him
24 out of that is that I feared flight.

1 A. I think he had a lot of things that he
2 had issues with. I think he was upset about the
3 acquisition and how he got shortchanged on that.
4 Apparently he mentioned to me that there was some cars
5 that were going to be given out, there was some options,
6 there was some reward that was going to be paid out as a
7 result of this, none of which was forthcoming according
8 to him. I think that he was looking for professional
9 growth, and I think he saw a big opportunity with
10 working with News America.

11 Q. And he told you all this?

12 A. Yes.

13 Q. And he told you that he didn't want to
14 work with Ann and Bob anymore?

15 A. I wouldn't say that he said it
16 specifically about them. I think he was just tired of
17 the environment.

18 Q. Is that what encouraged you to move him
19 to Connecticut?

20 A. No, it was twofold. First of all, I
21 wanted to retain him. Second, we had a strong need in
22 having somebody who could develop the Aspen product that
23 understood that area because our core IT group had not
24 worked in that area and we did not want him to leave.

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LELLOUCHE-5/25/07

Page 205

Page 207

1 Q. Did you talk to Ann and Bob about this
2 beforehand?
3 A. I don't recall.
4 Q. How long after the acquisition did this
5 move take place?
6 A. I don't recall that either.
7 Q. Was it fairly soon after?
8 MR. KATZ: Objection.
9 A. I don't know.
10 Q. Don't you think it made good business
11 sense to talk to Ann Raider and Bob Fireman about
12 breaking up the three of them?
13 A. You know, frankly he wanted to get away
14 from them.
15 Q. So I guess the answer to my question is
16 no, you don't think it was a good idea?
17 A. I didn't think it was a good idea.
18 Q. You didn't think that talking to Ann and
19 Bob and saying this is what we have planned for Bill
20 Adam before you undertook it was a good way to run the
21 business?
22 A. Well, he was working for the benefit of
23 the business now just in a different location.
24 Q. Do you think it was a good idea to talk

1 how did that impact those sales calls, if you know?
2 A. I think he made several calls that were
3 appropriate. We were between products. We were no
4 longer selling the old product, the old software
5 product, the MAS, and we were in a migration to a new
6 product. So I don't know that it was that meaningful.
7 Honestly, I don't know why Ann couldn't have sold it
8 herself --
9 Q. Do you --
10 A. -- given her experience and expertise.
11 Q. Do you leave room for the possibility
12 that the reason she had a hard time selling the
13 technical side of the business is because she's not a
14 technical person?
15 A. I don't leave room for that.
16 Q. When the sales pitches occur does the
17 customer usually have a technical person attend in your
18 experience?
19 A. If they get serious about it.
20 Q. When they get serious about it, which of
21 course is the goal, don't technical people in your
22 experience want to talk to technical people?
23 A. Yes.
24 Q. And Bill Adam was that technical person

Page 206

Page 208

1 to Ann and Bob beforehand and say in substance this is
2 what I plan to do?
3 A. No.
4 Q. You didn't think that was a good idea,
5 okay.
6 MR. KATZ: Objection.
7 Q. Now, there was no Aspen product when Bill
8 Adam was moved to Connecticut, was there?
9 A. In the marketplace?
10 Q. NAM hadn't acquired Aspen?
11 MR. KATZ: Objection.
12 A. I don't know.
13 Q. He wasn't moved to Connecticut to work on
14 Aspen, was he, because you didn't have Aspen yet?
15 MR. KATZ: Objection.
16 A. I don't know that to be the case either.
17 Q. Do you remember telling Bill Adam that he
18 would not get a raise if he stayed in Boston?
19 A. I have no recollection of that.
20 Q. Now, do you understand that Bill Adam
21 used to go on sales calls with Ann Raider to help pitch
22 the technical side of their business?
23 A. Yes.
24 Q. And after he was moved to Connecticut,

1 of the three of them?
2 A. For which product?
3 Q. MAS.
4 A. We were not selling MAS anymore.
5 Q. Answer my question for the moment.
6 A. What product are you referring to?
7 Q. I just I thought answered the question.
8 Notwithstanding I wouldn't answer questions I answered
9 one. MAS.
10 A. They were not selling it. There was no
11 need to go out there and support it.
12 Q. What about Aspen?
13 A. As you said, it was not in the
14 marketplace yet.
15 Q. Bill Adam had no role in sales calls?
16 A. His role was in selecting and developing
17 this product and bringing it to the marketplace. When
18 he moved he was given a title that, if I recall
19 correctly, was director of APS Services or
20 vice-president of ASP Services, which goes specifically
21 to the Aspen product. He was moved to work on the
22 SmartSource Direct business.
23 Q. The Aspen product was used by more than
24 SmartSource Direct, wasn't it?

LELLOUCHE-5/25/07

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Page 209

Page 211

1 A. No.
 2 Q. That was just a SmartSource Direct
 3 product?
 4 A. Absolutely.
 5 Q. It wasn't an enterprise-wide product or a
 6 product that at least bled over into other aspects of
 7 News America's business?
 8 A. Not at all.
 9 Q. You mentioned the MAS tool. That was the
 10 application that CCMI used to track customer behaviors?
 11 MR. KATZ: Objection.
 12 A. Say that again.
 13 Q. What was MAS for?
 14 A. MAS was an analytic tool that I know. I
 15 didn't know much about it though.
 16 Q. At some point that was eliminated from
 17 the CCMI product offerings?
 18 A. It was determined, frankly I think by the
 19 principals, not to be scalable to large retailers. They
 20 were mostly working with third- and fourth-tier
 21 retailers on that product that really were not
 22 particularly relevant to anybody.
 23 Q. Why not relevant?
 24 A. Too small. I think Bob referred to

Page 210

1 Sullivan Supermarkets yesterday. If I recall correctly
 2 they have three stores, hardly something that's going to
 3 make General Mills get excited.
 4 Q. What was the biggest company that had MAS
 5 implemented?
 6 A. I don't know.
 7 Q. Foodline, Nash Finch?
 8 A. Nash Finch is a wholesaler in the
 9 Midwest.
 10 Q. Did they have MAS?
 11 A. Yes.
 12 Q. How big are they?
 13 A. I don't know.
 14 Q. Thousands of stores?
 15 A. Maybe.
 16 Q. But you don't know?
 17 A. I don't know.
 18 Q. Certainly not a key retailer in the
 19 country?
 20 A. Well, they think so, don't they.
 21 MR. KATZ: Objection.
 22 MR. PETERS: Withdrawn.
 23 Q. When the MAS tool was eliminated was
 24 there another product put in place to take its

1 functionality over?
 2 A. I missed that.
 3 MR. KATZ: Kevin, can we have that back?
 4 I think the witness might want to take a break when it's
 5 a convenient time.
 6 MR. PETERS: We can take a break now.
 7 (Recess taken)
 8 (Marked Exhibit 2; E-mail, 4/4/00)
 9 BY MR. PETERS:
 10 Q. We've marked as Exhibit 2 a document with
 11 document control numbers FR 304 and 305. This is a
 12 document to you from Ann Raider, an e-mail. Take a
 13 moment and review it. Sir, you recognize the e-mail?
 14 A. Yes.
 15 Q. Do you remember it?
 16 A. No.
 17 Q. In a general way?
 18 A. No.
 19 Q. Do you have any reason to doubt it was
 20 sent to you?
 21 A. I don't have any reason to doubt it.
 22 Q. In this e-mail from Ann Raider to you
 23 from April 4th, 2000, she lists a series of problems
 24 that she is having or issues that are making it

Page 212

1 difficult to manage her staff. She lists Bill Adam
 2 which we've discussed. Do you see that?
 3 A. Yes.
 4 Q. She lists an issue with Rick, inviting
 5 Rick to New York City. Do you know what that refers to?
 6 A. I do not.
 7 Q. She states that he set a start date with
 8 Jim Mumm without asking her. Do you see that?
 9 A. Yes.
 10 Q. So there are a series of complaints that
 11 she articulates here or problems she articulates here.
 12 Do you have any reason to believe that any of them are
 13 not true or didn't occur?
 14 A. I have no reason to believe they are not
 15 true.
 16 Q. Did you respond to these complaints?
 17 A. I think I wrote above here that she was
 18 requested to be in an executive committee meeting.
 19 Q. Your response to her e-mail reads, quote,
 20 Ann, you were instructed to be in the office on Monday
 21 for the executive committee meeting. You were not in
 22 the office on Monday. You are further jeopardizing your
 23 credibility as an effective manager by intentionally
 24 ignoring instructions from management.

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LELLOUCHE-5/25/07

Page 213

Page 215

1 Is that the response that you gave her in
2 response to these very specific concerns articulated in
3 her April 4th e-mail?
4 MR. KATZ: Objection.
5 A. It's an e-mail that I wrote back. I
6 don't think I was directing any kind of response to the
7 note below.
8 Q. That's my question really, you didn't
9 respond?
10 A. I did not respond.
11 Q. Why not?
12 A. The overriding concern in my mind was she
13 was not at a mandatory meeting on Monday, our executive
14 committee meeting, and her credibility. And this goes
15 to the whole notion of following News America's policies
16 and procedures. This was just another demonstration
17 that they had no intention of integrating into the News
18 America community.
19 Q. Isn't Ann asking you in substance in this
20 April 4th e-mail to include her in these decisions that
21 you made without her participation?
22 MR. KATZ: Objection.
23 A. I don't know --
24 Q. Isn't that the sense you take from the

1 (Marked Exhibit 3; E-mail, 5/18/00)
2 Q. We've marked as Exhibit 3 a document with
3 control number FR 4745. It's from Ann Raider to you,
4 Mr. Lellouche. Would you take a look at the document,
5 please? Do you recall receiving this memorandum from
6 Ann Raider?
7 A. No.
8 Q. Do you have any doubt you did?
9 A. I don't doubt it.
10 Q. Have you had a chance to review the
11 concerns she articulates in this memorandum?
12 A. I have read it.
13 Q. Point one she discusses no staff. That's
14 what it's entitled. Do you agree with the statement she
15 makes in point one?
16 MR. KATZ: In their entirety?
17 MR. PETERS: If he agrees with anything
18 I'll explore it. If he doesn't, I won't.
19 A. I have issues with item one.
20 Q. Could you tell me what you disagree with?
21 A. I don't know that no staff is accurate.
22 I don't recall that. We were at zero staff count
23 according to her stipulation here.
24 Q. Where she does say zero staff count?

Page 214

Page 216

1 e-mail?
2 A. It sounds like she's venting.
3 Q. Well, she says, You made an offer to Bill
4 Adam without discussing it with me. You don't see that
5 as a problem?
6 A. I did not --
7 Q. She's saying you should have talked to me
8 about Bill Adam. You see that in the first bullet
9 point; right?
10 A. Yes.
11 Q. And you don't disagree with that, do you?
12 MR. KATZ: Objection.
13 A. I don't feel like I was compelled to
14 discuss it with her.
15 Q. You don't think it would have been a good
16 faith thing to do when you're trying to integrate a
17 business unit to rely on the input or at least solicit
18 the input and insight from the managers of that company
19 before undertaking major business decisions?
20 MR. KATZ: Objection, asked and answered.
21 A. I do not.
22 Q. Did you ever respond to Ann Raider about
23 the concerns articulated in this Exhibit 2?
24 A. I don't recall.

1 A. No staff.
2 Q. Okay.
3 A. I don't know that to be true. She's
4 saying that she's the only person on staff that could
5 sell. Seems unlikely.
6 Q. Where does she say she's the only person
7 on staff that could sell?
8 A. No staff.
9 Q. Let's move off of no staff. You disagree
10 with that.
11 A. Oh, fine.
12 Q. What else did you disagree with?
13 A. We have greater than two hundred
14 opportunities we could pursue.
15 Q. That's false in your mind?
16 A. In my mind that is completely false.
17 Q. What's the basis of your disbelief?
18 A. I just don't believe that to be remotely
19 true.
20 Q. But you can't give me a specific reason
21 why you think it's not true, can you?
22 MR. KATZ: Objection.
23 Q. Can you tell me why you don't believe Ann
24 was being honest here with you when she wrote, We have

LELLOUCHE-5/25/07

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Page 217

Page 219

1 greater than two hundred opportunities we could pursue?

2 A. I've never seen anything that listed, or
3 if you can show me something that listed these two
4 hundred opportunities I'll go through them line by line.

5 Q. But as you read this now, you don't
6 believe it's true because you don't recall the
7 opportunities?

8 A. No, Ann was prone to exaggerate.

9 Q. What else about this point one do you
10 think is inaccurate?

11 A. All the trade shows and conferences we
12 have attended this year. I don't remember -- I mean,
13 all is implying that there were multiples and I don't
14 recall that happening, unless there are ones that I
15 don't remember.

16 Q. But other than what you've articulated,
17 when we take a look at the first point and we leave the
18 title no staff out, you don't have any issues with the
19 first paragraph?

20 A. I can't verify it. I don't have any
21 issues, but I can't verify it. I don't know.

22 Q. Let's move on to point two of this
23 Exhibit 3 which is entitled, Retailer Marketing Program.
24 Read that, please, and tell me whether or not there's

1 publications, no.

2 Q. You generally disagree with point three?

3 A. Yes.

4 Q. And then she says, Henri, I would like to
5 spend time with you and Chris discussing these issues as
6 soon as possible. Do you know whether or not that
7 meeting ever took place?

8 A. I don't know.

9 (Marked Exhibit 4; Memorandum, 4/10/00)

10 Q. I've given you a document, Exhibit 4,
11 control number FR 0353, a memo from Ann Raider to you
12 from April 10th, '00. Would you review that, please,
13 and I'll have a question or two.

14 A. Okay.

15 Q. First question is, do you remember the
16 memorandum?

17 A. No.

18 Q. Do you doubt that you received it?

19 A. I don't doubt it.

20 Q. Ms. Raider writes in the first paragraph,
21 I have received your e-mail informing me that Bill Adam
22 would not attend the sales appointment at Big Y. This
23 meeting had already been rescheduled twice and cannot be
24 changed. By NAM's authority and your direction Bill no

Page 218

Page 220

1 information stated in this that's inaccurate from your
2 perspective?

3 A. Again with no staff, I take issue with
4 that.

5 Q. Who was her staff?

6 A. Account directors. Is she saying she had
7 no account directors working on her team or that no one
8 could sell; Bill Adam, Bob Fireman? I focus all my
9 energies into pursuing sales opportunities, maintaining
10 current customer relationships. We are a marketing
11 company but have no marketing products to offer. They
12 have plenty of products to offer the retailers.

13 Q. CCMi did?

14 A. Sure.

15 Q. What about point three?

16 A. I don't see what there is to refute or
17 deny on that.

18 Q. Well.

19 A. Looks like a statement to me.

20 Q. Do you agree with it?

21 A. Marketplace leadership, no. They were a
22 player in the marketplace, a minor one at best. They
23 built this reputation through recognition in the press.
24 I don't believe that either. Catalogs, no. Trade

1 longer reports to Bob and I.

2 Do you recall in substance what she's
3 referring to in this paragraph?

4 A. I do not.

5 Q. Do you recall precluding Bill Adam from
6 attending a sales call or a sales appointment at Big Y?

7 A. I do not.

8 Q. Do you remember the Big Y business at all
9 or the pitch to them?

10 A. I don't recall doing any business with
11 Big Y of any substance.

12 Q. Do you recall endeavoring to?

13 A. I don't.

14 Q. The next paragraph reads, Bob and I have
15 long told NAM of the value the three of us together
16 bring to the marketplace.

17 Do you recall talking to Ann and Bob
18 about that, the value of the three of them, the third
19 being Bill Adam?

20 A. No.

21 Q. Next sentence reads, The breakup of this
22 dynamic will affect our effort to do business in the
23 marketplace. Do you know whether it did?

24 A. No.

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LELLOUCHE-5/25/07

Page 221

Page 223

1 Q. Did you evaluate whether it would before
2 undertaking it, before breaking the three of them up?

3 A. I didn't believe it was the case and
4 which was one of the reasons I supported moving him to
5 the other office.

6 Q. What happened to Bill Adam, by the way,
7 ultimately?

8 A. He ultimately left to go to work for
9 another company.

10 Q. Was he fired?

11 A. I don't know.

12 Q. Back to our Exhibit 4. The next sentence
13 reads, NAM has no backup in place to support our
14 business. Totally unclear as to what continued support
15 Bill will give me, if any, and the ramifications of any
16 adverse sales initiatives for the list of prospects we
17 already have in place.

18 My simple question is, do you remember
19 seeing a prospect list from Ann?

20 A. No.

21 Q. Do you remember ever seeing a prospect
22 list from Ann?

23 A. No.

24 Q. Do you remember asking for a prospect

1 A. I have no recollection of that document.

2 Q. Do you remember building a P&L with Ann
3 Raider for 2001?

4 A. No.

5 Q. Did you make the decisions on head count?

6 A. No.

7 Q. Who made head count decisions?

8 A. Senior management.

9 Q. Did they solicit your input in making
10 these decisions?

11 A. They would. They would discuss with me
12 requests for head count increases, at which point I
13 would have to demonstrate with great clarity and great
14 confidence where the revenue is going to come from to
15 justify these head counts and then they would make a
16 decision as to whether that was credible or not, and
17 they would agree or not agree on head count increases or
18 decreases.

19 Q. Did you advocate for increased head
20 counts for CCM?

21 A. No, I doubt it.

22 Q. Did you believe that head count was
23 necessary to develop this emerging market?

24 A. No, I did not.

Page 222

Page 224

1 list from Ann?

2 A. I used to get weekly updates from Ann
3 about her progress in the marketplace.

4 Q. Including prospects?

5 A. Prospects, yes.

6 (Marked Exhibit 5; Memorandum, 4/12/00)

7 Q. The document we've marked as Exhibit 5
8 has control number FR 0239. It is a memorandum stamped
9 draft from Ann Raider to you. Please review it and
10 please respond to the first question, which is do you
11 recall seeing it before today?

12 A. I do not.

13 Q. Kindly read it in any event.

14 A. Okay.

15 Q. I want to take a look at the first point.
16 Ann writes in this draft memorandum under FY 2001 plan,
17 When you and I worked together to build the revenue side
18 of the P&L last week, I asked you about costs and in
19 particular my head count/staff. You said don't worry
20 about it. At the meeting yesterday you stated you made
21 the decision (without any input from me) on how many
22 people should be in our team and for what positions.

23 Does that statement correspond to your
24 memory?

1 Q. Did anyone ever tell you about promises
2 that were made to Ann and Bob, Ann Raider and Bob
3 Fireman, about head count and about staffing prior to
4 the acquisition?

5 A. Again, News America's policy is that head
6 count follows revenue.

7 Q. Yeah, but see my question was did anyone
8 ever tell you about promises made to Ann Raider and Bob
9 Fireman about head count, about staffing prior to the
10 acquisition?

11 A. No.

12 Q. Now, she says in the second paragraph of
13 this point one, I am a senior vice-president. That was
14 true; right?

15 A. In title.

16 Q. But not in responsibilities?

17 A. Depends on the time. I'm not sure about
18 in '00.

19 Q. Did she report to you?

20 A. Yes.

21 Q. You were a senior vice-president?

22 A. Yes.

23 Q. So you had Ann Raider as senior
24 vice-president reporting to you as a senior

LELLOUCHE-5/25/07

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Page 225

Page 227

1 vice-president at some point or another?
 2 A. Yes.
 3 Q. Is that typical at News America Marketing
 4 to have senior vice-presidents report to senior
 5 vice-presidents?
 6 A. No, it's not.
 7 Q. Are there any other senior
 8 vice-presidents other than Ann Raider?
 9 A. I don't know.
 10 Q. She writes, I am a senior vice-president.
 11 If I am to be accountable for driving sales, I should
 12 have the opportunity to present my plan on staffing
 13 requirements and at least have the forum to discuss it
 14 with management. Do you disagree with that statement?
 15 A. Yes.
 16 Q. Then she writes, This is an appropriate
 17 business practice used in all the other billion-dollar
 18 companies I have worked at; e.g., Gillette. Do you
 19 disagree that that is a true statement?
 20 MR. KATZ: Objection.
 21 A. I haven't the slightest idea.
 22 Q. You don't know whether or not it's an
 23 appropriate business practice to solicit the input of
 24 senior vice-presidents about staffing needs?

Page 226

Page 228

1 MR. KATZ: That's not what the sentence
 2 says.
 3 A. I can't comment about what happened at
 4 Gillette.
 5 Q. And you don't really have an opinion as
 6 to whether or not generally speaking it's an appropriate
 7 business practice to give a senior vice-president the
 8 opportunity to present a plan on staffing requirements
 9 and have a forum to discuss it with management?
 10 A. I've already explained how staffing is
 11 added within News America Marketing once. I'll be happy
 12 to explain it again.
 13 Q. Well, in this context we know that it was
 14 done without Ann Raider's input; right?
 15 MR. KATZ: Objection.
 16 A. I disagree with what is written here
 17 completely.
 18 Q. You completely disagree, okay.
 19 A. With the second sentence I should say ~~which~~
 20 which is I believe what we're referring to.
 21 Q. Sentence which reads, If I am to be
 22 accountable for driving sales, I should have the
 23 opportunity to present my plan on staffing requirements.
 24 You think she was given an opportunity to present her

1 plan on staffing requirements?
 2 A. No, I think there was an existing
 3 staffing situation involved, and there was a revenue
 4 call set against it and that was that.
 5 Q. Did you believe she had a forum to
 6 discuss her plan and staffing requirements?
 7 A. She may have discussed it with me, and I
 8 may or may not have perked up.
 9 Q. We'll move on to two. On two Ms. Raider
 10 writes in this memorandum, When CCMI was acquired we had
 11 a commitment from NAM to build turnkey programs for
 12 retailers; e.g., Baby Cub, and leverage NAM's
 13 properties.
 14 Do you know whether or not that statement
 15 is correct?
 16 A. I have no knowledge of such commitment.
 17 Q. No one ever told you about such a
 18 commitment; right?
 19 A. I don't know of any commitment that
 20 existed.
 21 Q. Let's go on to the third point entitled,
 22 Robert Coughlin's Responsibilities. I'm not going to
 23 read it. I'm going to ask you to read it and tell me if
 24 you understand the issues that she's articulating?

1 A. I've read it already.
 2 Q. And she's talking about Bob Coughlin,
 3 Robert Coughlin; right?
 4 A. Yep.
 5 Q. And she's talking about the elimination
 6 of the accounting function at CCMI; right?
 7 A. Yes.
 8 Q. What about the statements she makes in
 9 paragraph three are inconsistent with your recollection,
 10 if any?
 11 A. I don't know that Bill Adam was forced to
 12 do several jobs anymore than he was doing multiple jobs
 13 on an ongoing basis. So I guess I'm not disputing that.
 14 I'm just saying that that's not an exception. I don't
 15 know what work Robert did to support Ann in sales as an
 16 operations person. So I don't know what, the relevancy
 17 of that. No financial information from NAM, which was
 18 available at request. I can't imagine why it was
 19 withheld.
 20 Q. Should it have been?
 21 A. No. They had more -- they were privy to
 22 more information than I was.
 23 Q. Financial information?
 24 A. Of course. I never saw any of their

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LELLOUCHE-5/25/07

Page 229

Page 231

1 earn-out calculations. I had no idea about any of that
2 stuff until just recently.

3 Q. What else about this paragraph is
4 inconsistent with your memory or else you can't speak to
5 from personal knowledge?

6 A. I have no idea about this invoice from
7 Sullivan Stores, again a three- to five-store chain. If
8 Robert is not supported he will become forced to resign,
9 like Bill. I don't believe that Bill resigned. So I
10 think that's a false statement here. Robert did not
11 resign. He was released. And I don't know that Robert
12 was a valuable company asset. I think he was an
13 employee.

14 Q. The issues that are raised in this
15 memorandum that you can't speak to that you don't know
16 about, did you look into any of them so that you could
17 understand what the issues were and then perhaps address
18 them?

19 MR. KATZ: Can I have that back?

20 MR. PETERS: The witness testified that
21 in reading paragraph three there were a number of things
22 that he didn't know about. For example, he didn't know
23 whether Bill Adam was forced to do several jobs. He
24 didn't know whether Robert supported Ann. He didn't

1 America Marketing because it was redundant. There was
2 nothing for me to discover about that. I knew it to be
3 redundant.

4 Q. I'm asking what you didn't know that's
5 stated in this memorandum, what didn't you know. My
6 next question will be, what did you do to learn?

7 A. It's not that I don't know. I don't
8 believe a good chunk of this is true.

9 Q. So?

10 A. There is no call to action here. This is
11 another venting note.

12 Q. She's not asking for any help from you?

13 A. Do you see any request for action? I'm
14 sorry to ask you a question, but I don't see any request
15 for action.

16 Q. How about simply raising a problem with
17 one's manager so that the problem can be addressed? Do
18 you think it's typical in your business for people to
19 raise problems without any expectation of a resolution?

20 A. I don't see any call to action.
21 Especially with Bob being copied, I see it as another
22 one of their archive items in preparation for future
23 activity.

24 Q. That's how you viewed it at the time?

Page 230

Page 232

1 know these things.

2 A. I don't know.

3 Q. Right. And my question to you is, what
4 did you do to learn?

5 MR. KATZ: Objection. I'm not sure
6 that's an accurate characterization of the testimony,
7 but --

8 A. That's not what I was saying. I'll be
9 happy to repeat it.

10 Q. What about this paragraph three contains
11 information that you can't speak to because you don't
12 know?

13 A. Um.

14 Q. And the next question to save you a
15 little bit of time, what did you do to learn?

16 A. Well, in terms of --

17 MR. KATZ: Objection.

18 A. In terms of the 2001 plan, Ann was
19 advocating something that was a fate accompli. We had
20 already sized the staff.

21 Q. I'm just talking about paragraph three.

22 A. Paragraph three.

23 Q. Just three.

24 A. The accounting function was moved to News

1 A. That's how I view it now.

2 Q. No, sir. At the time when Ann Raider
3 raised issues with you, did you take them seriously
4 enough to take action?

5 A. When there was something actionable,
6 certainly.

7 Q. Did you expect Ann to always suggest the
8 resolution or do you think that as the general manager
9 of CCMI that it was your responsibility to look into a
10 resolution?

11 MR. KATZ: Objection.

12 A. I look at this note, I look at this note
13 now, I can't tell you what I thought at the time, but --

14 Q. You don't see her as soliciting any
15 assistance from you? I guess that's the last question
16 I'll ask you on that document.

17 MR. KATZ: Asked and answered.

18 A. I have nothing else to add.

19 Q. You can add a response to my last
20 question. You don't see this document, this statement,
21 these statements to you as a call by Ann Raider to help
22 resolve issues that were concerning?

23 A. I think they may have been concerning to
24 her. I don't believe that they were concerning to me.

Page 233

1 (Marked Exhibit 6; E-mail, 6/1/00)

2 Q. Exhibit 6, would you take a look at it?

3 It's an e-mail from Ann Raider to you. Have you had an

4 opportunity to read it?

5 A. Okay.

6 Q. Do you remember it?

7 A. No.

8 Q. Document control FR 0252 begins, Dear

9 Henri: The June 1, 2000 retail summit meeting to gain

10 retailer insight/commitment for our APS has been

11 cancelled five days before it was scheduled and three

12 weeks after the initial invitation went out. Do you

13 recall what that was about?

14 A. We had invited retailers into our offices

15 to discuss the ASP development to try and gain their

16 insights before we solidified the Aspen product.

17 Q. Why was it canceled?

18 A. It was canceled because senior management

19 disagreed that we were taking the approach -- I think we

20 were paying for the retailers to come into town and

21 possibly entertainment. When they caught wind of that

22 they shut it down.

23 Q. When she asks in the last sentence,

24 Henri, could we please seek management approval, you

Page 234

1 didn't do that?

2 A. Well, I was the one, I was advocating

3 this and management overrode me, which was their

4 privilege.

5 (Marked Exhibit 7; E-mail, 6/1/00)

6 Q. Exhibit 7 is document control number

7 FR 0248. Please take a look at it and tell me whether

8 you've seen it prior to this afternoon?

9 A. I don't recall this note.

10 Q. Do you have any reason to doubt you

11 received it?

12 A. I have no reason to doubt that.

13 Q. Tell me when you've had a chance to read

14 it.

15 A. Okay.

16 Q. She starts out by stating, I would like

17 to share with you again my concern about the lack of

18 internal (inside NAM) and marketplace recognition SSD is

19 receiving or, rather, not received. Our sales are not

20 mentioned at Monday executive meetings. The senior

21 managers across NAM still do not know what we do. We

22 are the last company mentioned in the iGroup web site,

23 looking like an afterthought. Do you disagree with

24 those statements?

Page 235

1 A. I disagree with several.

2 Q. Which ones?

3 A. Looking like an afterthought, I don't

4 agree with that. It was simply our position on the

5 iGroup web site, if that's true. I don't know that our

6 sales weren't mentioned at the Monday meeting. If they

7 were not it was internal, not intentional. It may have

8 been a system issue because the sales reports were

9 generated through our systems but may not have been

10 designed to incorporate the specialty groups. In fact,

11 I know that they weren't. It wasn't until later on that

12 there was flexibility to give you special group sales in

13 the corporate reporting. Any lack of internal or

14 marketplace recognition of SSD was our own doing. It's

15 our responsibility to get out there and talk with the

16 packaged goods community and the retail community.

17 Q. You were responsible for facilitating

18 that; right?

19 A. The sales force?

20 Q. Yes.

21 A. Yes.

22 Q. The last statement reads, Henri, we

23 desperately need to build awareness of what we can offer

24 retailers and manufacturers. Do you disagree with that

Page 236

1 statement?

2 A. I disagree with that statement.

3 Q. It wasn't important to build awareness?

4 MR. KATZ: Objection.

5 A. You know what I should say -- I'd like to

6 rephrase that. Certainly building awareness is

7 important of what we can offer, but it does not need to

8 be done through trade journals and trade shows and all

9 these feel-good things that don't really do anything

10 effectively to generate sales. Certainly on the

11 manufacturers' side I'll reiterate again that we had

12 nothing to offer the manufacturers of substance that

13 they would redirect a 150 person sales force.

14 Q. That's your opinion?

15 A. Isn't that what you're asking?

16 Q. Yes, I'm asking your opinion.

17 A. That is my opinion.

18 Q. You're just stating it as a matter of

19 fact. It's not a matter of fact. That's your view?

20 MR. KATZ: Objection.

21 A. Oh, were you asking for my opinion or my

22 view? I'm confused.

23 Q. Yes, you appear to be. I'm asking for

24 the truth.

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LELLOUCHE-5/25/07

Page 237

Page 239

1 A. Are you suggesting that I'm lying?
 2 Q. I'm suggesting that you testified earlier
 3 that there were products that were sold. In fact, the
 4 transcript will read about ten minutes ago you said that
 5 they had a lot of products to offer.
 6 MR. KATZ: Objection.
 7 A. I stand by what I just said.
 8 Q. Now, your competitors, did they build
 9 awareness --
 10 A. Are we still on this page?
 11 Q. Your competitors, did they build
 12 awareness by publishing in trade publications; that is,
 13 the competitors to CCM?
 14 A. You'll have to name some.
 15 Q. Well, what about Catalina, Valassis?
 16 A. They participated in trade shows. They
 17 participated in advertisements.
 18 Q. Do you have any sense about how effective
 19 that was in building awareness about what they had to
 20 offer?
 21 A. I have no sense of it at all.
 22 Q. Did you ever look into what made your
 23 competitors successful?
 24 MR. KATZ: I'm sorry?

Page 238

1 Q. Did you ever look into what made your
 2 competitors successful?
 3 A. No.
 4 (Marked Exhibit 8, E-mail; 8/25/00)
 5 Q. Exhibit 8 is an e-mail to you, document
 6 control FR 0054. Please take a look at it and tell me
 7 if you remember it.
 8 A. Okay, go.
 9 Q. Do you remember the issues that she's
 10 articulating in this exhibit?
 11 A. Yes.
 12 Q. In general what do you recall about it?
 13 A. Can you give me something specific to
 14 speak to?
 15 Q. She's talking about Valassis acquiring
 16 RMS; right?
 17 A. Yes.
 18 Q. And how that is going to affect the
 19 ability to compete, isn't she?
 20 A. Yes, that's her concern.
 21 Q. Right, and she says in the third
 22 paragraph, Henri, we say NAM has relationships with
 23 thirteen hundred manufacturers. SSD needs NAM's help to
 24 capitalize on those relationships now.

1 Do you disagree with that? More
 2 specifically, did you disagree at the time?
 3 A. I disagree completely.
 4 Q. And then she asks, I suggest we assemble
 5 an executive team to discuss where we think Valassis
 6 will go first and present the biggest threats in what
 7 will be our plan to contain their efforts.
 8 Did the executive team that she asked to
 9 be assembled ever assemble?
 10 A. Well, we assembled each week for our
 11 executive committee. I don't recall any specific task
 12 force event if that's what you're referring to.
 13 Q. Was there anything specifically done to
 14 address the issues articulated in Exhibit 8?
 15 A. Yes.
 16 Q. What?
 17 A. We went to Kroger to ensure that we would
 18 still have a flow of data back to us. We could still
 19 execute programs there. And we did have that in place
 20 as Valassis displaced Catalina. But short of that there
 21 really was nothing in here that was relevant to our
 22 business. Prevision went out of business.
 23 Supermarket/drug trade class is a dud. RMG is out of
 24 business. RMS was a software product that we passed on

Page 240

1 because it was a loser. And that's the extent of it.
 2 Q. How much revenue in loyalty products and
 3 direct marketing is Catalina doing these days, do you
 4 know?
 5 MR. KATZ: Objection.
 6 A. I don't know. I'll tell you what I said
 7 before at the beginning of our session, I'll say three
 8 hundred fifty to four hundred million. It's a publicly
 9 traded company. It can be looked up.
 10 Q. Do you know how much Valassis is doing in
 11 loyalty products and direct marketing?
 12 A. I don't know. They don't break it out
 13 clearly in their statements.
 14 (Marked Exhibit 9; E-mail, 9/13/01)
 15 Q. Exhibit 9 is document control number
 16 FR 0193. It's a series of e-mail to and from you from
 17 September '01. Take a look, please, and tell me if you
 18 recall the e-mail?
 19 A. Okay.
 20 Q. Do you recall the e-mail?
 21 A. No.
 22 Q. Do you recall in general the substance of
 23 what's being discussed?
 24 A. Yes.

LELLOUCHE-5/25/07

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Page 241	Page 243
<p>1 Q. In the e-mail from Ms. Raider to you she</p> <p>2 expresses a concern about a quarterly review for Duane</p> <p>3 Reade. That is to occur the following day. And then</p> <p>4 she says in the last sentence of the first paragraph,</p> <p>5 quote, We have not closed the sale because we are</p> <p>6 understaffed in the manufacturer sales department for</p> <p>7 two years now. Do you agree with that statement?</p> <p>8 A. No.</p> <p>9 Q. Is your response to that above where you</p> <p>10 write, quote, Staffing is our responsibility on the</p> <p>11 sales side and we have not brought in candidates in the</p> <p>12 industry for consideration.</p> <p>13 A. Will you just tell me where you are right</p> <p>14 now? I'm sorry.</p> <p>15 Q. I'm wondering whether or not your first</p> <p>16 paragraph responds to her first paragraph?</p> <p>17 A. Certainly responsibility at that time, we</p> <p>18 did not have recruiters on staff at the time, and we</p> <p>19 were trailing off from using headhunters because we had</p> <p>20 wasted a lot of money on poor candidates. So the</p> <p>21 explanation here is that we have to take it upon</p> <p>22 ourselves given our experience and contacts to bring</p> <p>23 people on staff.</p> <p>24 Q. So your first paragraph responds to her</p>	<p>1 makes in the third or fourth paragraph of her e-mail?</p> <p>2 A. And begins with and? I'm sorry.</p> <p>3 Q. No, we are the only division of the</p> <p>4 iGroup that generates sales.</p> <p>5 A. Oh.</p> <p>6 Q. Let me withdraw my last question. Let me</p> <p>7 read you this paragraph and then ask you questions about</p> <p>8 it.</p> <p>9 A. Okay.</p> <p>10 Q. We are the only division of the iGroup</p> <p>11 that generates sales, and it is criminal that we do not</p> <p>12 get management's financial or business support. I take</p> <p>13 it you disagree with that statement?</p> <p>14 A. Without a doubt.</p> <p>15 Q. You think there was more than sufficient</p> <p>16 financial and management support?</p> <p>17 A. I think that there were appropriate</p> <p>18 levels of management and financial support, and I</p> <p>19 certainly don't think it was criminal.</p> <p>20 Q. That's hyperbolic, isn't it? She's not</p> <p>21 accusing you of criminal conduct.</p> <p>22 A. I'm literally responding to what you were</p> <p>23 asking me.</p> <p>24 Q. I didn't ask you about a crime, sir.</p>
Page 242	Page 244
<p>1 first paragraph; right?</p> <p>2 A. To the extent where she's talking about</p> <p>3 shortage of staff, if that's what you're referring to.</p> <p>4 Q. So you're saying in substance if you find</p> <p>5 him we'll hire him; right?</p> <p>6 A. If they were open and if there were open</p> <p>7 and authorized positions, which I can't speak to.</p> <p>8 Q. You don't know if there were any open and</p> <p>9 authorized positions at the time she was writing this</p> <p>10 e-mail?</p> <p>11 A. This is 2001. I don't recall.</p> <p>12 Q. I want to take you to the last paragraph</p> <p>13 of your e-mail back to Ann where you write, On the IT</p> <p>14 side I share your frustration, and while you can vent to</p> <p>15 me, you are preaching to the choir. Bill Christie is</p> <p>16 informed of our situation. We must do the best we can.</p> <p>17 What are you referring to there when you</p> <p>18 say you are preaching to the choir?</p> <p>19 A. I knew we were shorthanded. If you if</p> <p>20 notice we're coming, a while but we're coming off of a</p> <p>21 hiring freeze, and we're trying to bring this product to</p> <p>22 market, and it wasn't coming to market as fast as we</p> <p>23 would have liked.</p> <p>24 Q. So you agree with the statements Ann</p>	<p>1 Didn't I ask you whether or not there was sufficient</p> <p>2 management support? Is your answer yes?</p> <p>3 A. Yes.</p> <p>4 Q. Anything short of criminal is sufficient;</p> <p>5 is that your response?</p> <p>6 MR. KATZ: Objection.</p> <p>7 A. I'm advocating that it's appropriate</p> <p>8 levels of business and financial support.</p> <p>9 Q. I was being facetious obviously. At</p> <p>10 least it was obvious to me.</p> <p>11 Competition is moving to capture market</p> <p>12 share that should be ours. Do you disagree with that</p> <p>13 statement, which is the very last statement she makes to</p> <p>14 you?</p> <p>15 A. I disagree with that statement. If she's</p> <p>16 referring to the IT, which it's hard to say, I shouldn't</p> <p>17 have even speculated there so I'm -- I take that back.</p> <p>18 Q. Pardon me?</p> <p>19 A. I don't believe that there was any market</p> <p>20 share lost in 2001.</p> <p>21 (Marked Exhibit 10; E-mail, 11/24/04)</p> <p>22 Q. Direct your attention to Exhibit 10,</p> <p>23 document control number FR 0583, and specifically to the</p> <p>24 paragraph that begins, Finally, even after Safeway</p>

Page 245

Page 247

1 Marketing. Please read that paragraph. I'll have a
2 question or two about it.
3 A. Okay.
4 Q. My first question concerns Ahold, or
5 Ahold. Was there an effort to do business with Ahold;
6 that is, NAM's effort to do business with Ahold during
7 your tenure as the general manager?
8 A. You're going to have to clarify that.
9 Q. This paragraph that I asked you to read
10 refers to some business with Ahold. Does the paragraph
11 refresh your recollection about any business that was
12 being done by or attempted to be done with Ahold through
13 Stop & Shop Stores?
14 A. By whom?
15 Q. News America Marketing selling prepaid
16 cellular?
17 A. Yes.
18 Q. Can you tell me about that transaction?
19 What did you hope to accomplish?
20 A. The goal was to -- we had already secured
21 the Buy Low business for prepaid, which at the time was
22 part of Ahold. I think that they decoupled at some
23 point. I don't know whether that's concurrent with this
24 or not. I can't tell if the date on here is right.

1 A. Yes.
2 Q. But your understanding is SmartSource
3 Direct was not awarded the contract ultimately?
4 A. There was no contract on this business.
5 Q. Did SmartSource Direct make the decision
6 not to pursue the business at any point?
7 A. Yes.
8 Q. When, was it before --
9 A. I don't know exactly when. It was
10 concurrent with my discussions with Safeway Marketing
11 Services.
12 Q. What was the business justification for
13 SmartSource Direct deciding not to pursue the business?
14 A. The business decision was that I had a
15 meeting coming up with Safeway Marketing Services where
16 I was interested in gaining rights to access their
17 frequent shopper data which was currently held
18 exclusively or accessed exclusively by Valassis, and it
19 was hampering SmartSource Direct's business in direct
20 mail quite seriously. I met with Safeway Marketing
21 Services who expressed a great interest in the Stop &
22 Shop and Giant-Landover prepaid business, which by the
23 way we didn't have. We had some sort of a verbal
24 loosey-goosey yes-I-think-you've-got-it thing. So at a

Page 246

Page 248

1 Then there was an opportunity to do a prepaid cellular
2 program at Stop & Shop and Giant-Landover. There was a
3 lengthy bidding process. We made it to the finals of
4 that bidding process.
5 Q. Did SSD win the RFP?
6 A. SSD was the finalist in the RFP. There
7 was never any contract executed. There was never any
8 award of business. There was never any document that I
9 saw that said that we had the business.
10 Q. You responded to an RFP and you were
11 awarded the business?
12 A. I never heard anyone say that. In fact,
13 I contacted Stop & Shop. And you're going to ask me who
14 I spoke to. I can't tell you for a fact. I believe it
15 was Don Sussman. I'm not certain. And I asked if this
16 was, in fact, awarded to us. And he said it was not
17 awarded.
18 Q. Was that at about the time of the
19 business; in other words, was that about the time of the
20 RFP?
21 A. It was about at the time of the -- it
22 related to the discussion that this paragraph refers to.
23 Q. So there was an RFP. SmartSource Direct
24 was a finalist in the RFP?

1 lunch that was attended by Marty Garofalo and Dan
2 Domahauske [PHONETIC] of Safeway Marketing Services, I
3 said that I would like to have access to the Safeway
4 database in exchange for withdrawing ourselves from the
5 prepaid cellular program which was for the benefit of
6 SmartSource Direct.
7 Q. With whom at Safeway did you have this
8 conversation?
9 A. Dan Domahauske, and you can't ask me to
10 spell that one.
11 Q. Was there already a contract that had
12 been negotiated with Stop & Shop for this business?
13 A. There may have been drafts going back and
14 forth.
15 Q. Was the contract to a point where it was
16 ready to be signed as best you recall?
17 A. I don't know that to be the case.
18 Q. Was SmartSource Direct working with a
19 partner on this potential transaction?
20 A. Well, if it had to do with prepaid, we
21 were working with Airtime Technologies, or AirWaves,
22 whatever d/b/a they were using for that particular
23 transaction.
24 Q. Was the floor advertising business at

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Page 249

Page 251

1 Safeway discussed in your conversation with
 2 Mr. Domahauske?
 3 A. Domahauske.
 4 MR. KATZ: Objection.
 5 A. Not in the least.
 6 Q. And prior to making a determination not
 7 to -- let me back up. How much time was spent trying to
 8 get the business from Stop & Shop, this prepaid cellular
 9 business?
 10 A. I don't know.
 11 Q. Years?
 12 A. Years, I don't think years.
 13 Q. Eighteen months at least?
 14 A. I don't know.
 15 Q. Prior to pulling out did you have a
 16 conversation with the people at AirWaves?
 17 A. No.
 18 Q. You just pulled out?
 19 A. There was no contract.
 20 Q. Did AirWaves send any demand or other
 21 correspondence to News America Marketing about this
 22 transaction?
 23 A. Not that I saw. I have a great working
 24 relationship with AirWaves to this day.

Page 250

1 Q. What happened with Bob Fireman's job at
 2 SmartSource Direct ultimately?
 3 A. I'll have to refer that to Mr. Garofalo.
 4 He was not under my supervision at the time.
 5 Q. When did your supervision of Mr. Fireman
 6 end?
 7 A. Sometime during the last year of his
 8 employment with us. I can't tell you exactly when.
 9 Q. Do you know why it ended?
 10 A. The supervision?
 11 Q. Yes.
 12 A. I think it was a management decision by
 13 Mr. Garofalo to move him under his direction.
 14 Q. Did you have any conversation with
 15 Mr. Garofalo about that decision?
 16 A. I just was informed of it and I
 17 understood it.
 18 Q. You didn't inquire as to the reasons?
 19 A. I don't recall inquiring.
 20 Q. So all you recall about the subject is
 21 that Mr. Garofalo said Mr. Fireman, Bob, is going to
 22 report to me in substance?
 23 A. Mm-hmm.
 24 Q. Yes?

1 A. Yes, I'm sorry.
 2 MR. PETERS: Give me about three minutes.
 3 (Recess taken)
 4 (Marked Exhibit 11; E-mail, 6/23/04)
 5 BY MR. PETERS:
 6 Q. Exhibit 11 is an e-mail from you to
 7 Mr. Garofalo and others. Attached to it is an
 8 evaluation, an annual performance evaluation and
 9 appraisal of Mr. Fireman; is that correct?
 10 A. Yes, it is.
 11 Q. Did you prepare this document?
 12 A. Yes, I did.
 13 Q. Now, at any time prior to preparing this
 14 document, did Mr. Carlucci tell you that Bob had to be
 15 fired?
 16 A. No.
 17 Q. Did Mr. Carlucci say anything that you
 18 construed as negative about Mr. Fireman?
 19 A. He certainly wasn't happy with the
 20 result, sales result.
 21 Q. Did he say anything about Bob Fireman
 22 personally that you construed to be an indication that
 23 he held Mr. Fireman in anything other than high regard?
 24 A. Not that I know of.

Page 252

1 Q. Was this performance evaluation ever
 2 given to Mr. Fireman?
 3 A. I don't believe it was.
 4 Q. Why is that?
 5 A. For the reasons I articulate here.
 6 Actually I don't articulate it here. I should say
 7 concurrently the supervision of Mr. Fireman was moving
 8 over to Mr. Garofalo. I prepared this and it was
 9 essentially out of my hands that point. My impression
 10 was that Mr. Fireman was going to be delivered a
 11 document requesting his early departure. So it seems,
 12 as I'm seeing here, to administer an APA when somebody
 13 is exiting is not something we typically do.
 14 Q. Do you know why Mr. Fireman was going to
 15 be asked to sign a document for early departure?
 16 A. I don't know.
 17 Q. Was he asked to leave the office, News
 18 America Marketing offices?
 19 A. I don't know that answer either.
 20 Q. So you don't know what ultimately
 21 transpired from firsthand knowledge or secondhand
 22 knowledge?
 23 A. I know from Mr. Garofalo. I met with him
 24 one night and Marty Garofalo told me that Bob rejected

1 the offer.

2 Q. You don't know why the offer was being
3 made, I take it?

4 A. I wasn't privy to that.

5 Q. And you didn't ask?

6 A. No.

7 MR. KATZ: You've answered the question.

8 Q. Right, and again after Mr. Garofalo said
9 that Mr. Fireman rejected the offer, you don't know what
10 happened after that, I take it?

11 A. I don't know what happened after that,
12 no.

13 MR. PETERS: Thank you, nothing further.
14 (Deposition concluded at 3:00 p.m.)
15
16
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24

1 COMMONWEALTH OF MASSACHUSETTS)

2 SUFFOLK, SS.)
3
4

5 I, Cynthia A. Powers, Shorthand Reporter and
6 Notary Public in and for the Commonwealth of
7 Massachusetts, do hereby certify that there came before
8 me on the 25th day of May 2007, at 8:07 a.m., the person
9 hereinbefore named, who was by me duly sworn to testify
10 to the truth and nothing but the truth of his knowledge
11 touching and concerning the matters in controversy in
12 this cause; that he was thereupon examined upon his
13 oath, and his examination reduced to typewriting under
14 my direction; and that the deposition is a true record
15 of the testimony given by the witness.

16 I further certify that I am neither attorney or
17 counsel for, nor related to or employed by, any of the
18 parties to the action in which this deposition is taken,
19 and further that I am not a relative or employee of any
20 attorney or counsel employed by the parties hereto or
21 financially interested in the action.

22 IN WITNESS WHEREOF, I have hereunto set my hand
23 and affixed my notarial seal this 17th day of June 2007.
24

Cynthia A. Powers, Notary Public
My Commission expires July 2, 2010

1 I have read the foregoing transcript and the same
2 contains a true and accurate recording of my answers
3 given to the questions therein set forth.
4
5

6 _____
7 HENRI F. LELLOUCHE
8

9 On this _____ day of _____, 2007, before me, the
10 undersigned notary public, personally appeared Henri F.
11 Lellouche, proved to me through satisfactory evidence of
12 identification, which were _____,
13 to be the person whose name is signed on the preceding
14 or attached document, and who swore or affirmed to me
15 that the contents of the document are truthful and
16 accurate to the best of his knowledge.
17
18

19 _____
20 NOTARY PUBLIC
21
22
23
24

EXHIBIT C

Mixson, Christopher

July 18, 2007

New York, NY

Page 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

-----x

ROBERT FIREMAN and ANN RAIDER,

Plaintiff,

Civil Action No.

-against-

05-1740MLW

NEWS AMERICA MARKETING IN-STORE,

INC.,

Defendant.

-----x

July 18, 2007

11:43 a.m.

Deposition of CHRISTOPHER MIXSON, taken
by the Plaintiffs, pursuant to Notice, at the
offices of News Corp, 1211 Avenue of the
Americas, New York, New York, before David
Levy, CSR, a Notary Public of the State of New
York.

Henderson Legal Services
202-220-4158

Mixon, Christopher

July 18, 2007

New York, NY

Page 2	Page 4
<p>1 APPEARANCES:</p> <p>2</p> <p>3 TODD & WELD LLP</p> <p>4 Attorneys for Plaintiffs</p> <p>5 28 State Street</p> <p>6 Boston, Massachusetts 02109</p> <p>7 BY: KEVIN T. PETERS, ESQ.</p> <p>8</p> <p>9 HOLLAND & KNIGHT LLP</p> <p>10 Attorneys for Defendant</p> <p>11 10 St. James Avenue</p> <p>12 Boston, Massachusetts 02116-3889</p> <p>13 BY: GORDON P. KATZ, ESQ.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 CHRISTOPHER MIXSON, having been</p> <p>2 duly sworn by the Notary Public, was examined</p> <p>3 and testified as follows:</p> <p>4 MR. PETERS: Gordon, proceeding under</p> <p>5 the same stipulations?</p> <p>6 MR. KATZ: Yes.</p> <p>7 EXAMINATION BY</p> <p>8 MR. PETERS:</p> <p>9 Q. Mr. Mixson, my name is Kevin Peters.</p> <p>10 We met briefly while waiting for the court</p> <p>11 reporter and I represent Bob Fireman and Ann</p> <p>12 Raider.</p> <p>13 Would you give us your name, spell it</p> <p>14 and tell us where you live.</p> <p>15 A. My name is Christopher Mixson, that's</p> <p>16 Christopher with a C-h, M as in Michael,</p> <p>17 i-x-s-o-n, and I live in Greenwich, Connecticut.</p> <p>18 Q. Can you have your address?</p> <p>19 A. It's 30 Stagg Lane, Greenwich,</p> <p>20 Connecticut, 06381.</p> <p>21 Q. Mr. Mixson, what do you do for a</p> <p>22 living?</p>
Page 3	Page 5
<p>1 ----- I N D E X -----</p> <p>2 WITNESS EXAMINATION BY PAGE</p> <p>3 CHRISTOPHER MIXSON MR. PETERS 4</p> <p>4</p> <p>5 PLAINTIFF EXHIBIT (MIXSON) FOR IDENT.</p> <p>6 47 E-mail chain Bates numbered FR0215 143</p> <p>7 48 E-mail document Bates numbered 146</p> <p>8 FR1313</p> <p>9 49 E-mail document Bates numbered 147</p> <p>10 FR0032</p> <p>11 50 E-mail document Bates numbered 183</p> <p>12 FR1246</p> <p>13 51 E-mail with attachments, Bates 184</p> <p>14 numbered FR0559 through 562</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 A. I'm currently president of News</p> <p>2 America Marketing.</p> <p>3 Q. How long have you had that position?</p> <p>4 A. Roughly three years, give or take.</p> <p>5 Q. Can you take me through your</p> <p>6 education.</p> <p>7 A. Yes. I have an undergraduate degree,</p> <p>8 Bachelor of Arts degree, with an emphasis in</p> <p>9 English literature from Western Illinois</p> <p>10 University, graduated in 1976.</p> <p>11 I did some limited graduate work in</p> <p>12 business but left prior to getting a degree. And</p> <p>13 that's about the sum of my formal education.</p> <p>14 Q. The graduate work, it was done at</p> <p>15 what university?</p> <p>16 A. Same school.</p> <p>17 Q. Did you focus on any particular area</p> <p>18 of business, marketing, for example?</p> <p>19 A. Yes, focused on marketing.</p> <p>20 Q. Was it an MBA program?</p> <p>21 A. Yes, it was. I didn't complete it,</p> <p>22 though.</p>

2 (Pages 2 to 5)

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Mixon, Christopher

July 18, 2007

New York, NY

Page 6	Page 8
<p>1 Q. What years?</p> <p>2 A. I would have to take a guess at that.</p> <p>3 Probably '8 -- roughly '81, part of '82.</p> <p>4 Q. Can you take me through your job path</p> <p>5 up to the time that you joined News America</p> <p>6 Marketing.</p> <p>7 A. Completely?</p> <p>8 Q. Yes, please.</p> <p>9 A. Leaving college, I took a job with a</p> <p>10 publishing company in Lakewood, Colorado,</p> <p>11 relatively short-lived situation. Immediately</p> <p>12 following that, I took an entry-level sales and</p> <p>13 marketing position with the Quaker Oats Company</p> <p>14 headquartered out of Chicago, Illinois.</p> <p>15 I worked in a number of different</p> <p>16 capacities with Quaker as part of their</p> <p>17 management training program, including everything</p> <p>18 from actually calling on retail stores to</p> <p>19 developing trade promotion programs and other</p> <p>20 promotional programs for multi-state sales teams</p> <p>21 within Quaker, working in their human resources</p> <p>22 department, working in their sales training area,</p>	<p>1 of the business, and growing in that side of the</p> <p>2 business, I was very successful there, graduated</p> <p>3 within -- was there for approximately five years,</p> <p>4 graduated to one of their most senior account</p> <p>5 directors. As I recall, I was the top account</p> <p>6 director in the organization the year that I was</p> <p>7 recruited away by a division of Citicorp.</p> <p>8 I worked for about five years for</p> <p>9 Citicorp POS Information Services, eventually</p> <p>10 leaving there as vice president, national account</p> <p>11 director -- national accounts director, plural.</p> <p>12 Sorry.</p> <p>13 That business was eventually shut</p> <p>14 down by Citicorp and I was picked up -- after</p> <p>15 doing a little bit of consulting work with Advo,</p> <p>16 which is the nation's largest direct mail</p> <p>17 company -- I was recruited by News America FSI</p> <p>18 and ended up running their Denver office, and</p> <p>19 have progressed within the News America</p> <p>20 organization in a variety of different</p> <p>21 capacities, including, they formed a region</p> <p>22 around me -- I had some great success early in my</p>
Page 7	Page 9
<p>1 working to some extent in their brand management</p> <p>2 area, and then I was more or less spun out of</p> <p>3 that program into a management situation where I</p> <p>4 ran a ten-person sales team that covered --</p> <p>5 headquartered out of St. Louis that covered a</p> <p>6 multistate area.</p> <p>7 Q. This is still for Quaker?</p> <p>8 A. Yes, calling on primarily what we</p> <p>9 would call headquarter accounts on the retail</p> <p>10 side of the business.</p> <p>11 After leaving Quaker, I went back to</p> <p>12 school for a short period of time, left there and</p> <p>13 took a job with a company called SAMI. SAMI</p> <p>14 eventually, through acquisition, became SAMI</p> <p>15 Burke. SAMI was a marketing research company,</p> <p>16 one of the leading marketing research companies</p> <p>17 for the packaged goods industry. Burke Marketing</p> <p>18 Research was probably the state-of-the-art</p> <p>19 customer research house for the packaged goods</p> <p>20 industry. Those two companies merged.</p> <p>21 I took a relatively entry-level</p> <p>22 position with them, wanted to get into that side</p>	<p>1 tenure in the company -- they formed a region</p> <p>2 around me called the Rocky Mountain region.</p> <p>3 That was relatively short-lived as</p> <p>4 well, and they moved me to restage the Chicago</p> <p>5 operation for News America FSI as a -- I had</p> <p>6 various vice president titles here. Some of them</p> <p>7 are -- I don't know how meaningful one is versus</p> <p>8 the other, but I was a vice president, group vice</p> <p>9 president, senior vice president, that kind of</p> <p>10 thing.</p> <p>11 In Chicago, successfully restaged</p> <p>12 that operation and they relocated me back here to</p> <p>13 New York to head up sales for the entire company,</p> <p>14 for News America FSI. In 1997 News America FSI,</p> <p>15 News Corp., acquired Heritage Media primarily to</p> <p>16 incorporate the Act Media division, which was the</p> <p>17 in-store marketing division of Heritage Media</p> <p>18 into the News America enterprise and shortly</p> <p>19 thereafter, we reintroduced ourselves as News</p> <p>20 America Marketing.</p> <p>21 I did that for a number of years,</p> <p>22 engineered the integration of those two sales</p>

3 (Pages 6 to 9)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 10</p> <p>1 organizations and once that process was 2 completed, by that time we had acquired -- a 3 venture group that we had had acquired some other 4 properties that I was asked to work to develop 5 into a sustainable business. We called those 6 properties the IGroup. I was moved over to the 7 IGroup as president. 8 I was there for two years, give or 9 take, probably a little shy of that, at which 10 time the core business got into a little bit of 11 trouble in terms of our volume, both base and 12 roving during the time that I was gone. The 13 chief executive officer of News America Marketing 14 asked me to come back over and help correct that 15 situation. I was successful in doing that and, 16 shortly thereafter, was promoted to president of 17 News America Marketing. And that's the position 18 that I hold today. 19 Q. What year did you start with News 20 FSI? 21 A. I believe my anniversary is September 22 of 1992.</p>	<p style="text-align: right;">Page 12</p> <p>1 that I presented to the organization for 2 consideration. The chief executive officer of 3 the organization, you know, was not necessarily 4 keen on integration at that time because there 5 was a big investment in Heritage. I don't know 6 the actual size of the investment but it was 7 substantial. We decided to test the integration 8 in our smallest sales region, which was Los 9 Angeles. So we tested it for a certain period of 10 time. 11 During that period of time, other 12 influences within the marketplace dictated that, 13 unless that test was unsuccessful, it would be in 14 the company's best interest to move forward with 15 integration, and we did that in due course over 16 the matter of a number of months. 17 So I think the integration probably 18 took place over the course of, you know, after 19 the initial introduction, probably we completed 20 it sometime in 1999. 21 Q. When did you put together the 22 integration plan? You don't have to give me a</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. And you mentioned that you engineered 2 the merger of the sales forces between Act Media 3 and News America Marketing? 4 A. That's correct. 5 Q. When did that occur? 6 A. Well, it was a staged integration. 7 You know, it's hard for me to recall exactly when 8 we completed it. You know, I developed a plan 9 shortly after the acquisition. I guess, if you 10 wanted me to talk a little bit about how that 11 whole process worked, I was not involved in the 12 acquisition of the Heritage property. It's 13 fairly consistent with the way we operate that, 14 you know, we don't want to be unduly jeopardizing 15 the retention of key people at, you know, for 16 companies that you get involved with. You want 17 to maintain key people. Part of the reason you 18 buy organizations is not only for the products 19 but for the people. 20 So there was some concern about 21 pursuing the integration route overtly. I 22 independently put together an integration plan</p>	<p style="text-align: right;">Page 13</p> <p>1 month, but was that sometime in 1998? 2 A. Yeah, it was either -- either late 3 '97 or sometime in '98 that I presented the plan 4 for consideration. 5 Q. Shortly after Heritage was acquired? 6 A. Well, "Shortly" is a relative term, 7 but -- we acquired it in 1997. 8 Q. So sometime that year? 9 A. Sometime between 1997 and '99, when 10 we actually pulled the trigger on integration, I 11 had presented a plan. 12 Q. Chronologically, was that integration 13 done prior to or after the acquisition of the 14 entities that became the IGroup? 15 A. Oh, it was done -- it was done 16 before, I believe. 17 Q. Did that integration impact the sales 18 force in any adverse way for a period of time? 19 In other words, was there a ramp-up period after 20 the integration to allow people to get 21 acclimated? 22 MR. KATZ: Objection.</p>

4 (Pages 10 to 13)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 14</p> <p>1 A. I don't know, other than to say that 2 the integration has been wildly successful to 3 date. You know, you have peaks and valleys in 4 sales volume for a variety of different reasons. 5 Some of them not specifically associated with the 6 construction of a sales force. But generally 7 speaking, from its inception to now, you know, 8 when we first integrated the sales force, and 9 News America Marketing had had a low 40 percent 10 market share on the FSI side of the business, and 11 we had about a \$200 million in-store business. 12 Today we have a 65 percent share of 13 the FSI business and approaching a \$400 million 14 in-store business. So certainly some of that can 15 be attributed to the way we go to market. And we 16 go to market as a single-source organization 17 right now. 18 Q. What do you mean by that? 19 A. Well, we have one representative, who 20 primarily represents a large number of our 21 products. Not all of our products, but a large 22 number of our products.</p>	<p style="text-align: right;">Page 16</p> <p>1 command at News America Marketing as relatively 2 flat? 3 MR. KATZ: Objection. 4 A. Again, I don't know what "relatively 5 flat" is. 6 Q. I'm trying to understand whether or 7 not decisions on how the sales force reps a 8 product is done by committee, or are they 9 essentially done by a committee subject to a 10 final approval by a person like you? 11 MR. KATZ: Objection. 12 A. I really don't know how to answer the 13 question. There is a great deal of autonomy 14 extended to senior sales managers that we have. 15 I think there are standards that we have as an 16 organization that we expect all of our sales 17 teams to adhere to. And given the success that 18 we've had in the industry at large, we're pretty 19 convinced that the way we go to market is -- is 20 the best way to go to market and, generally 21 speaking, our sales force moves through a 22 development program where, by the time they have</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. So the rep develops a relationship 2 with a manufacturer or the retailer and that 3 person is the sales rep for most of News 4 America's products; is that the model? 5 A. Yes. Generally speaking that's the 6 model. 7 Q. And I take it, Mr. Mixson, that 8 you're the person who was at the top of the food 9 chain in terms of the sales force? 10 A. We have a national sales manager now, 11 but, you know, we run the business through an 12 executive committee. We are a sales and 13 marketing company, so that's the focus of the 14 organization, developing products that are used 15 by, you know, our advertisers. So I guess, yeah, 16 you could say that I'm at the top of the food 17 chain to some extent. Things surface to me that 18 need to surface to me and, hopefully, we do a 19 good job of delegating responsibility to those 20 people who can handle things that make decisions 21 and -- so again, it's relative. 22 Q. Would you describe the chain of</p>	<p style="text-align: right;">Page 17</p> <p>1 significant responsibility for, as producers 2 within the organization, they are well steeped in 3 how we go to market. 4 So there's a great deal of buy-in and 5 acceptance of standards that preclude me from 6 getting involved in lots of things that are not 7 bigger issues. 8 Q. The term you used to describe your 9 sales force or your sales reps, my notes reflect, 10 is it "single source" or "sole source"? Would 11 you remind me of -- 12 A. "Single source" is -- it's not a term 13 that's unique to News America. It's, I think 14 it's a term that's widely used in industries 15 from -- for businesses that cover a wide spectrum 16 of -- provide a wide spectrum of solutions for 17 customers. 18 Q. And how is the decision made as to 19 which products the sales reps rep or sell? And I 20 think you mentioned that they sell most but maybe 21 not all. How do you make that determination? 22 A. Well, I think we would divide -- we</p>

5 (Pages 14 to 17)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 18</p> <p>1 look at our products, you know, there's a -- 2 euphemistically we refer to the more mature 3 products that we have that have been in the 4 marketplace for a long time, the freestanding 5 inserts as a case in point, and the syndicated 6 in-store products, promotions, our advertising 7 and promotion products. 8 We look at those as mature concepts, 9 even though we refresh the kinds of products that 10 we may introduce in-store, that they fall within 11 that more traditional perspective of in-store 12 market -- syndicated in-store marketed promotion 13 products, those would all be managed by a sales 14 team. And our clients, normally speaking, have 15 line item budgets year in, year out, that are 16 created to purchase and utilize those products. 17 We have other emerging businesses. 18 Emerging businesses would include certainly the 19 Internet-based businesses, the purchase 20 behavior-based targeting businesses, the -- to 21 some extent our merchandising businesses. We 22 have custom publishing businesses, we have -- we</p>	<p style="text-align: right;">Page 20</p> <p>1 utilizing purchase behavior to develop marketing 2 campaigns? 3 A. Yes. 4 Q. Who repped SmartSource Direct's 5 sales, products and services? 6 A. Who are the sales representatives 7 or -- 8 Q. What sales force? 9 A. We have a sales force right now that 10 reports up to -- we have a fellow named Mr. Russo 11 who runs our direct sales force -- actually, 12 Henry Lellouche runs the IGroup and I think that, 13 if you're talking about the food chain that you 14 had mentioned before, Jim Russo reports up to 15 Henry Lellouche. That's a relatively recent 16 change that we've made. I think Henry ran that 17 business from the sales perspective personally 18 for, certainly the -- the time that -- up until 19 just a couple of months ago. 20 Q. Let's focus on the year 2000. We'll 21 go back in time. Can you tell me what sales 22 force repped SmartSource Direct's products and</p>
<p style="text-align: right;">Page 19</p> <p>1 have special thematic -- thematically-based 2 businesses. 3 All of those kinds of things are 4 satisfying more of a unique niche in the 5 marketplace. And those would not be necessarily 6 part of the core sales responsibilities. And by 7 that I mean, we wouldn't establish goals for 8 those products for the core sales force. We 9 would have specialty salespeople who have goals 10 for those products. 11 That's not always the case. 12 Sometimes we will have a blend of specialty 13 product goals that we will also assign to the 14 core to work in concert with the specialty sales 15 teams. We do, we modify things as we move 16 through time to best complement the growth of 17 business. 18 Q. Let's focus on SmartSource Direct. 19 Was SmartSource what you would call an emerging 20 business segment? 21 A. Yes. 22 Q. And focusing on purchase behavior, or</p>	<p style="text-align: right;">Page 21</p> <p>1 services? 2 MR. KATZ: In the year 2000? 3 MR. PETERS: Yes. In that time 4 frame. 5 A. We -- 6 MR. KATZ: If you know. 7 MR. PETERS: Well, look -- 8 A. We had -- 9 Q. All of these questions are if you 10 know. You don't need him to coach you on that 11 point. 12 A. I appreciate -- 13 Q. Don't answer the question if you 14 don't know. 15 A. I appreciate his counsel. It depends 16 which side of the business you're talking about. 17 We have a retail side of our sales force and we 18 have a manufacturing side of our sales force. 19 And I think to a large extent, we didn't have 20 much of a product to sell on the SmartSource 21 Direct side of the business. It was, there 22 wasn't the refinement of product that, you know,</p>

6 (Pages 18 to 21)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 22</p> <p>1 allows us to have a well-developed sales force 2 represented, certainly, on the manufacturing side 3 of the business. There were some products and 4 services on the retail side of the business which 5 ultimately, you know, had to ultimately changed 6 as well. 7 But we had probably more 8 representation on the retail side of the business 9 than we did on the manufacturing side of the 10 business. And I can't, you know, if you're going 11 to ask me the names of all the people who did 12 that, you're going to be disappointed because I 13 can't remember them, or most of them. 14 Q. Well, at the moment, I'm more 15 interested in the organization. There was a -- 16 was there a separate retail sales force and a 17 separate manufacturing sales force? 18 A. Well, again, primarily in the -- 19 Q. I should focus you, Mr. Mixson, to 20 the time period of, you know, late '99 through 21 2000; the early years, if you will, of the 22 acquisition of SmartSource Direct, then known as</p>	<p style="text-align: right;">Page 24</p> <p>1 please, and we're still just focusing on the 2 retail sales. Your testimony is that Ann Raider 3 provided the identities or the names of people 4 who she thought would be good sales reps to sell 5 to retailers? 6 A. I think there was an -- I think Ann, 7 Bob and Henry were all actively involved in 8 interviewing and extending offers and ultimately 9 hiring people to come on board to support that 10 retail sales force, is my recollection. 11 Q. Is it your belief that the retail 12 sales force was something that needed to be 13 developed at CCMI or SmartSource Direct, back 14 when you came on board in 2000? 15 A. When I came on board in 2000, the 16 mission was to take these properties that we had 17 acquired and grow them into sustainable 18 businesses. So to some extent, any time you're 19 involved in an enterprise like that, you're -- 20 there is a little bit of trial and error involved 21 in trying to figure out how you're going to do 22 that.</p>
<p style="text-align: right;">Page 23</p> <p>1 CCMI, at least initially. 2 A. Okay. Well, I can only speak to the 3 situation after I was appointed to try to figure 4 out this business. 5 Q. Well, let's take that as a benchmark. 6 When was that? 7 A. I think that was in -- I want to say 8 it was in 2000. 9 Q. Okay. 10 A. And again, we had -- we had -- Henry 11 Lellouche was involved early on. Henry really 12 had responsibility, oversight of that business. 13 And he worked with Ann Raider and other people 14 who were largely recruited from outside the 15 organization to, I believe at the -- at the -- I 16 won't use the word "insistence," but the 17 recommendation of Ann Raider and Bob Fireman. We 18 brought people in from outside of the business to 19 represent that business and sell on the retail 20 side, which is different from the way we normally 21 develop a sales force in our market. 22 Q. Take me through that a little bit,</p>	<p style="text-align: right;">Page 25</p> <p>1 I think our plan, and the plan that 2 we pursued, was to bring people on board to 3 represent products that currently existed, and 4 those products were frequent-shopper card -- that 5 we brokered frequent-shopper card relationships 6 between retailers and manufactures of frequent 7 shopper cards. 8 We attempted to sell application 9 processing and to some extent, although the 10 infrastructure wasn't really there to support it, 11 to provide some type of data hosting. So those 12 were products that -- that existed, although, you 13 know, frankly, on a relative basis to other 14 things that were available in the industry, it 15 was a tough sale because they were much less 16 sophisticated than other businesses that were out 17 there. 18 But we did have products, so we did 19 bring people on board to try and grow that part 20 of the business. 21 On the manufacturer side of the 22 business, there really wasn't, you know, a</p>

7 (Pages 22 to 25)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 26</p> <p>1 product, per se, that, you know, you could have 2 people out peddling, although we did -- and it's 3 not inconsistent with the way News America has 4 done marketing in the past, we sometimes try to 5 sell a little -- sell products that we think we 6 can deliver to our major customers. So if we 7 found out that a customer, major packaged goods 8 customer would be interested in a database 9 marketing product, we would try to get as much 10 information as we could on their project and then 11 determine whether or not we thought we might be 12 able to get something going there, so to speak. 13 But that was less of a focus early on 14 because you really don't have a syndicated, you 15 know, a substantial package product that you 16 could introduce into the marketplace, nor do you 17 necessarily have relationships with retailers so 18 you have a ready data stream that's of any size 19 or consequence for those advertisers. 20 So we focused our efforts, as I 21 recall, primarily on the retail side. 22 Q. Let's talk just for a minute about</p>	<p style="text-align: right;">Page 28</p> <p>1 accession, and to develop the facility to deliver 2 those types of broad skill programs that 3 manufacturers are looking for. 4 Q. Describe the products, please, that 5 you would have liked to have sold to 6 manufacturers back in 2000 but you believed 7 didn't exist in the CCMI suite of products and 8 sources. 9 MR. KATZ: Objection to form. 10 You can answer the question if you 11 understand it. 12 A. Well, I never worked with CCMI. I 13 always -- CCMI -- I think of CCMI, that's 14 preacquisition. 15 Q. Let's just substitute SmartSource 16 Direct within my question. 17 A. Okay. So the question again is? 18 Q. The question is, what products and 19 services did you hope to sell for SmartSource 20 Direct to manufacturers but were, in your view, 21 unavailable early on, let's say in 2000? 22 A. The types of products that we're</p>
<p style="text-align: right;">Page 27</p> <p>1 manufacturing, the sale or lack of sales of 2 products to manufacturers. Your testimony is 3 that you didn't think that there was a salable 4 product; does that accurately encapsulate what 5 you're telling me? 6 A. Yeah. Well, there's different 7 reasons for that but, yes, I think our ability 8 to, you know, you can have the best salesperson 9 in the world but if you don't have a viable 10 product, that salesperson is going to have a 11 difficult time being successful. And I don't 12 think that we had, you know, tremendously viable 13 products at that point in time, because the 14 products were dependent upon both being able to 15 acquire the purchase behavior data you needed to 16 do targeting and being able to process it and 17 execute against it efficiently. 18 Keep in mind, this was early in our 19 development. Today we're very successful in that 20 business. We're growing. But it's taken -- it's 21 taken, you know, the appropriate amount of time 22 to build that reputation, to build the data</p>	<p style="text-align: right;">Page 29</p> <p>1 selling now. The types of products that we're 2 selling now have a high degree of customization 3 to them. But they have -- they have scale. 4 Scale was something that we didn't have back in 5 2000. And they have form in the sense that 6 sampling programs, highly targeted consumer 7 promotion programs, all predicated on your 8 ability to slice and dice data in a way that 9 allows you to go in and sell consultatively to 10 customers and help guide their purchase 11 decisions. 12 We didn't have that capability early 13 on in the program. We invested heavily in some 14 technology that would assist us in getting there, 15 but we didn't have it back in 2000. 16 Q. Let me just see if I understand what 17 would have been sold to manufacturers if you 18 thought it was available for sale and in a 19 salable form. 20 Programs designed to market a 21 manufacturer's product, that are designed using 22 information developed at the point of sale that</p>

8 (Pages 26 to 29)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 30</p> <p>1 tracks customer behavior or customer purchase</p> <p>2 habits; is that --</p> <p>3 A. Yes.</p> <p>4 Q. -- correct?</p> <p>5 A. Yes.</p> <p>6 Q. So back when you first came on to the</p> <p>7 IGroup, you were integrating these three business</p> <p>8 units, and we'll talk about that in a minute.</p> <p>9 Your perspective was that there wasn't a product</p> <p>10 sufficiently developed to sell to manufacturers?</p> <p>11 A. To sell -- we certainly could cobble</p> <p>12 together small programs but manufacturers</p> <p>13 generally are going to be going to vendors who</p> <p>14 can -- who can satisfy their appetite for scale.</p> <p>15 We couldn't provide the scale early</p> <p>16 on in the enterprise, so we had a difficult time</p> <p>17 competing against that. We really didn't have a</p> <p>18 sale of a product on a relative basis with other</p> <p>19 vendors in the market, vendors like RMS, and</p> <p>20 ultimately VRMS --</p> <p>21 Q. Catalina?</p> <p>22 A. Catalina had a totally different</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. So manufacturers were not marketed</p> <p>2 to.</p> <p>3 MR. KATZ: Objection.</p> <p>4 A. No, I don't think that's -- I don't</p> <p>5 think that's fair. I think that, you know, we're</p> <p>6 opportunists. As sales -- as a sales</p> <p>7 organization, if we have a customer where we have</p> <p>8 an excellent relationship who has communicated to</p> <p>9 us that they would like to investigate a</p> <p>10 targeting initiative, you know, we may have the</p> <p>11 opportunity to satisfy that request at some level</p> <p>12 and, if we could do it, we would.</p> <p>13 Q. But that process is a reactive</p> <p>14 process, versus proactive --</p> <p>15 A. Well, it's really a combination of</p> <p>16 the two. I think you have some salespeople who</p> <p>17 are, you know, I cast myself in that role when I</p> <p>18 was a youngster out there selling. I would</p> <p>19 actively pursue opportunities and if I -- if I</p> <p>20 thought I hit a resonant chord with a client, I</p> <p>21 would be selling on the outside of the envelope</p> <p>22 coming back to my business and saying, "Hey, I</p>
<p style="text-align: right;">Page 31</p> <p>1 delivery system. So, you know, Catalina had</p> <p>2 emerged as the gold standard, I think, of</p> <p>3 marketing on some levels, primarily due to their</p> <p>4 sophisticated electronic delivery system and</p> <p>5 their access to streaming purchase behavior data</p> <p>6 where they could slice and dice that at will and</p> <p>7 come back to manufacturers with real consultative</p> <p>8 recommendations.</p> <p>9 We didn't have access to streaming</p> <p>10 data to do that. We had to submit queries to</p> <p>11 retailers to generally even have access to data.</p> <p>12 So it was a much more cumbersome, much more</p> <p>13 difficult to compete.</p> <p>14 Q. Am I correct that the manufacturing</p> <p>15 sales force was not given the SmartSource Direct</p> <p>16 suite of products and services to market to</p> <p>17 manufacturers?</p> <p>18 A. There was no suite of products and</p> <p>19 services --</p> <p>20 Q. That's my --</p> <p>21 A. -- on the manufacturer's side of the</p> <p>22 business.</p>	<p style="text-align: right;">Page 33</p> <p>1 think I have this opportunity, can we do this?"</p> <p>2 Okay?</p> <p>3 You have other salespeople that are</p> <p>4 not risk-takers who are going to be less prone to</p> <p>5 do that. So it's, you know, we have a very large</p> <p>6 sales organization. We have some people who are</p> <p>7 very good at certain things. We have other</p> <p>8 people that are very good at other things. So,</p> <p>9 you know, it's -- it's all -- it's not cut and</p> <p>10 dried.</p> <p>11 Q. Was there an organized focused effort</p> <p>12 to sell SmartSource Direct's products and</p> <p>13 services to manufacturers during the time that</p> <p>14 you were with the IGroup?</p> <p>15 A. Yes.</p> <p>16 Q. Can you describe that for me?</p> <p>17 A. Well, given the abstract nature of</p> <p>18 database marketing, Henry Lellouche would conduct</p> <p>19 sessions in all of our sales offices where he</p> <p>20 would -- we would have all of our sales teams</p> <p>21 come together for education and sales training,</p> <p>22 and Henry would, you know, describe the products,</p>

9 (Pages 30 to 33)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 34</p> <p>1 describe the process, describe the opportunities 2 as they currently existed, which at first were 3 somewhat limited, and then I guess the best way 4 to address, and we still sell that way, where we 5 try to get our -- our core sales force, our core 6 relationshipholders, stakeholders at the accounts 7 as up to speed on all of our products so that 8 they can become -- they are not experts, but I 9 would refer to them as accomplished generalists 10 who can understand our product lines, our 11 specialty product lines well enough to do a 12 competent job of representing them to clients. 13 And again, if they strike a resonant 14 chord of interest or find out that there's going 15 to be a project dedicated in that area, we reach 16 out and call the experts in and the experts come 17 in and pursue that particular opportunity. 18 Q. So when you described early on the 19 sales force as a single-source sales force, I 20 take it, then, that the manufacturer sales force 21 was encouraged to market, to sell CCMI's or 22 SmartSource Direct's products and services back</p>	<p style="text-align: right;">Page 36</p> <p>1 competitors have had of operating in the red. 2 We're able to operate in the black that way and 3 progressively grow our business here. So... 4 Q. As a general matter, am I correct 5 that your sales force is encouraged to sell all 6 products that News America Marketing has to 7 offer? 8 A. Yes. 9 Q. And are they compensated equally on 10 those sales? In other words, is there a -- let 11 me take it in smaller steps. 12 How are your sales force members 13 compensated? Salary and commission? 14 A. Yes. 15 Q. And the commission is based on 16 overall sales? 17 A. It's based on, you know, reaching 18 assigned sales goals is a big part of it. There 19 are other ways that we compensate our people. 20 I'll just cut to the chase for you. 21 I think the question that you're -- that you're 22 asking is, are they additionally compensated for</p>
<p style="text-align: right;">Page 35</p> <p>1 in the days when you were with the IGroup? 2 A. Yeah. I -- and I'd have to go back 3 and, you know, I can't really recollect all the 4 details associated with that. It was a long time 5 ago in my work. But that's consistent with the 6 way we go to market today, and we haven't really 7 deviated from that. We have, you know, we have a 8 big investment in the specialty sales area, so 9 naturally we're all interested in figuring out a 10 way to make them as successful as we possibly 11 can. 12 We're not going to make them 13 successful by throwing HR resources against them 14 that weighs on the bottom line. You're going to 15 be successful by putting -- right-sizing them out 16 of human resources you put against them, and 17 piggybacking them on the relationships we have 18 with our major packaged goods players. They 19 worked very, very well for us. 20 We've done a good job in main 21 businesses where our competitors have failed 22 because we haven't made the mistake that our</p>	<p style="text-align: right;">Page 37</p> <p>1 representing the specialty products as well, and 2 this answer to that is yes. They are able to 3 share in any success that is ultimately achieved 4 by fleshing out the opportunity, bringing the 5 specialty representatives in to help close the 6 sale and the core person benefits from that 7 successful sale above and beyond what they 8 benefit through reaching their own 9 personally-assigned sales goals. 10 Q. Back in 2000 and around that time, 11 did the sales force have sales goals that 12 pertained specifically to the sale of SmartSource 13 Direct's products and services? 14 A. I can't recall. 15 Q. Do they presently have sales goals 16 that target specifically the sale of SmartSource 17 Direct's products and services? 18 A. They don't -- they don't specifically 19 have sales goals, but they have compensation 20 override opportunities. So they are strongly 21 motivated to assist in selling. So for example, 22 if I am a core salesperson at Schick, and my</p>

10 (Pages 34 to 37)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 38</p> <p>1 day-to-day consultative selling relationship with 2 Schick -- and you have to keep in mind that we're 3 a very substantial vendor with these major 4 packaged goods players. We have a very good 5 reputation, certainly a reputation that includes 6 keeping information confidential because market 7 information is power, but we're invited in as 8 members of promotion planning and decision 9 groups. 10 When you're invited in to those types 11 of sessions, you become privy to future plans. 12 They might include a database marketing program. 13 We would then -- we don't really have to, you 14 know, be too aggressive in our efforts to get in 15 there because we now have a reputation as 16 executing quality programs, so we're invited in. 17 But we would -- the core salesperson 18 would then alert the specialty salesperson, the 19 SmartSource Direct salesperson, to come in. If 20 they are successful in closing a sale, the volume 21 would be attributed against the specialty 22 salesperson's sales goal and then we would give</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. And the manufacturer sales force has 2 sales goals both for core products and specialty 3 products? 4 A. No. Well -- 5 Q. The manufacturer -- 6 A. Your nomenclature is a little mixed 7 up. Let me help you out. We have what you 8 referred to as our core sales group. They have 9 specific goals. We have specialty areas that 10 have dedicated salespeople. They have their 11 goals. They are both selling to manufacturers. 12 So they are both manufacturer sales reps to an 13 extent. 14 Q. I'm talking now about your core sales 15 force. At least I intended to. 16 A. Yes, they have a specific sales goal 17 for their core products, and then they have an 18 opportunity to not only reach these sales goals, 19 but reach even higher compensation levels by 20 successfully partnering with the specialty 21 salespeople and assisting them in closing 22 specialty sales.</p>
<p style="text-align: right;">Page 39</p> <p>1 the -- an override on the volume and also 2 dedicate -- dedicate that override to 3 accomplishment of the core person's sales goal. 4 Q. So -- 5 A. So at the end of the year, the 6 salespersons successfully achieve their core 7 product sales goal, they would now be up in the 8 bonus rounds, you know, based on the additional 9 revenue that's being attributed to their 10 territory based on their success in complementing 11 the specialty sales group. 12 Q. So the sales goals are based on 13 target core products. 14 MR. KATZ: Objection. 15 A. I'm sorry, I don't understand the 16 question. 17 Q. The sales goals are set on core 18 products? 19 MR. KATZ: Objection. 20 A. Sales goals are set on all products. 21 Q. Including specialty products? 22 A. Yes.</p>	<p style="text-align: right;">Page 41</p> <p>1 Q. Okay. Now, this is the way it's done 2 today. 3 A. That's correct. 4 Q. Is that also the way it was done in 5 2000? 6 A. I can't recall. I mean, the 7 compensation program normally evolves year to 8 year as we figure out ways to do things better. 9 So I'm not exactly sure the way the structure was 10 set up in 2000. 11 Q. What I'm really interested in finding 12 out is whether or not the core sales force sold 13 specialty products, and in this particular 14 instance, SmartSource Direct's products, to the 15 manufacturers in 2000 and 2001. 16 Do you recall that? 17 A. They would certainly complement 18 the -- the sale. I can't give you the specifics 19 of how we constructed the sales goals, bonus 20 plans, compensation plans around that. But, you 21 know, it's -- it's akin to, if you wanted to date 22 a girl, and you didn't know her at all but you</p>

11 (Pages 38 to 41)

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Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 42</p> <p>1 had a close friend who knew her well, chances are 2 pretty good you'd want to use your close friend 3 to get an introduction to the girl you wanted to 4 date. 5 It's very, very similar in the way we 6 operate the business. It's the core salespeople 7 who have the most day-to-day interaction with the 8 key decisionmakers on the packaged goods side. 9 So it's only natural that our specialty sales 10 teams are going to want to piggyback on those 11 relationships to try and foster successful 12 closure on sales that they are assigned. 13 Q. Is the core sales force directed to 14 try to sell SmartSource Direct's products? 15 A. Yes. I mean, that's why Henry would 16 make, would go around doing his presentations to 17 the various sales offices on what SmartSource 18 Direct is all about, and how they can assist us 19 in successfully growing SmartSource Direct's 20 business. 21 Q. That was your expectation, in other 22 words, it was your expectation that the sales</p>	<p style="text-align: right;">Page 44</p> <p>1 yesterday at Mr. Garofalo's deposition, and if 2 you take a look at it, Mr. Mixson, the first 3 question is if you saw this before today. 4 A. You want me to go through this? 5 Q. Yes, just take a look at it and 6 familiarize yourself sufficiently to tell me if 7 this is something you recall seeing back in the 8 day or otherwise. 9 (Witness perusing document.) 10 A. I don't recall this particular piece, 11 but I'm conversant in the topics that are 12 addressed in it. 13 Q. I will tell you the properties of the 14 document place this department in the August 1999 15 time frame. But I'll ask you whether or not my 16 observation is consistent with your memory. 17 A. Okay. 18 Q. Is it? Does it look like something 19 that you would have seen -- 20 A. I have know -- 21 Q. -- might have seen back then? 22 A. It certainly -- it could be something</p>
<p style="text-align: right;">Page 43</p> <p>1 force would be directed to try to sell 2 SmartSource Direct's products and services? 3 A. Yes. 4 Q. And do you know for a fact that that 5 happened, or do you assume it happened because 6 that's what should have happened? 7 A. No. It happened with varying degrees 8 of success. Again, to be able to sell something, 9 you have to have a product to sell. You know, 10 and I think -- I can't -- well, I have to 11 speculate as to where we were at, at that 12 particular point in time, because I can't recall 13 the exact progression. 14 Q. I show you a document that we've 15 marked in Mr. Garofalo's deposition yesterday -- 16 MR. KATZ: Whenever you want to take 17 a break, we can do that, and we'll resolve 18 what we want to do for lunch. I 19 personally am indifferent to what we do. 20 So -- this is off the record. 21 (Discussion off the record.) 22 Q. This is Exhibit 39. We marked that</p>	<p style="text-align: right;">Page 45</p> <p>1 that I might have seen. I have no specific 2 recollection of this piece, though. 3 Q. Take a look at the page which is 4 third from the -- 5 A. The page you're looking at? 6 Q. Third page from the end. It says, 7 "CCMI Full Service Database Marketing Services." 8 Yes, sir. 9 As you look at the PowerPoint 10 presentation that discusses these services that 11 CCMI had to offer, is it consistent with your 12 memory that first off, the program implementation 13 products and services were products and services 14 that were available? 15 A. No. 16 Q. Salable? 17 A. No. I think there's a little bit of 18 progressive thinking that goes into a lot of 19 these things. You're looking at a -- I think 20 you're looking as much as a "wannabe" chart as a 21 "currently is" chart. 22 Q. You say that why? What's the</p>

12 (Pages 42 to 45)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 46</p> <p>1 basis --</p> <p>2 A. I say that based on my experience,</p> <p>3 that this as much represents, you know, where we</p> <p>4 hope to emerge as where we were currently at, at</p> <p>5 the time that this slide was put together, I</p> <p>6 think.</p> <p>7 Q. Let's take a look first at the first</p> <p>8 column, "Product Implementation."</p> <p>9 A. Okay.</p> <p>10 Q. Tell me what, in your view, doesn't</p> <p>11 belong there.</p> <p>12 MR. KATZ: Objection.</p> <p>13 A. These might be things that we had</p> <p>14 some competency in doing. Whether or not there</p> <p>15 was truly a market that we could effectively</p> <p>16 compete in for these things remained to be</p> <p>17 discovered, okay, in 1999. Because it certainly</p> <p>18 remained to be discovered in 2000 and beyond, as</p> <p>19 we -- as we learned, as we moved through time, a</p> <p>20 lot of -- a lot of this stuff really ultimately</p> <p>21 wasn't salable because there wasn't a need in the</p> <p>22 marketplace for the services that News America</p>	<p style="text-align: right;">Page 48</p> <p>1 side, those are manufacturer-focused components.</p> <p>2 And if you look at the middle, those are the</p> <p>3 things that you need to do to bridge the two.</p> <p>4 Q. Okay.</p> <p>5 A. Okay?</p> <p>6 Q. Well then, let's take that</p> <p>7 understanding. And I'll go with that. The</p> <p>8 retailers, were all the four issues, were all the</p> <p>9 four products listed under program implementation</p> <p>10 available in 1999 and 2000 for sale to retailers?</p> <p>11 A. Again, you need to -- this is why I'm</p> <p>12 trying to make sure that you understand -- I</p> <p>13 think that SmartSource Direct or, back at this</p> <p>14 time, SmartSource Direct hadn't even been</p> <p>15 unveiled, I guess this is CCMI. Let me speak of</p> <p>16 it in terms of SmartSource Direct because this</p> <p>17 predates me.</p> <p>18 Q. Right.</p> <p>19 A. But I'll try so we don't have to come</p> <p>20 back to this again in the future.</p> <p>21 We could do frequent-shopper program</p> <p>22 design. Anybody can. You know, I did that for a</p>
<p style="text-align: right;">Page 47</p> <p>1 could provide here.</p> <p>2 Same thing -- same thing holds true</p> <p>3 on the data management side of things.</p> <p>4 Q. Well, I just want to focus just for a</p> <p>5 minute, Mr. Mixson, on program implementation.</p> <p>6 And my question is, of the four things listed</p> <p>7 under "Program Implementation," do you believe</p> <p>8 that some of them were unavailable, in other</p> <p>9 words, some of them were not salable?</p> <p>10 MR. KATZ: Objection.</p> <p>11 A. I had think -- I think to some</p> <p>12 degree, all of them were salable. The question</p> <p>13 is to whom, to what businesses.</p> <p>14 Q. Well, let's focus on, first,</p> <p>15 manufacturers. Do you believe --</p> <p>16 A. Well, I don't think -- I think you're</p> <p>17 heading in the wrong direction here. The -- if</p> <p>18 you look at the far left-hand side of this page,</p> <p>19 it's really not manufacturers that are being</p> <p>20 addressed here. These are -- these are really</p> <p>21 retailer-focused components. Okay?</p> <p>22 If you look to the far right-hand</p>	<p style="text-align: right;">Page 49</p> <p>1 living for -- for years. I was part of one of</p> <p>2 the pioneers in development of database marketing</p> <p>3 and frequent-shopper program creation.</p> <p>4 Q. Was that at Citibank?</p> <p>5 A. Yes. Citicorp POS Information</p> <p>6 Services was the pioneer in database marketing.</p> <p>7 Application process and card design</p> <p>8 production, issuance and replenishment, I would</p> <p>9 say, yes, we could to all those things but on a</p> <p>10 very small scale, because we didn't have the --</p> <p>11 on one hand, we didn't have the systems and the</p> <p>12 competency to handle very large programs and on</p> <p>13 the other hand, a lot of this stuff was, even at</p> <p>14 this time, being brought in-house to the very</p> <p>15 large retailers. They had no need to continue to</p> <p>16 go through middlemen in order to facilitate these</p> <p>17 particular requirements. Which is one of the --</p> <p>18 one of the unfortunate things that we discovered</p> <p>19 after we had had made the acquisition.</p> <p>20 There are a lot of things here that I</p> <p>21 would imagine the people who originally made the</p> <p>22 decision to buy this company had hoped would</p>

13 (Pages 46 to 49)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 50</p> <p>1 blossom into real business opportunities but 2 there was an evolution in the business that took 3 place. As consolidation took place on the retail 4 side of the business, these things were all being 5 brought in-house. 6 So while we did do business in these 7 areas over time, you know, you didn't have to be 8 a weatherman to know which way the wind blows. 9 We saw these businesses contracting in terms of 10 the overall future opportunities that might exist 11 against them. So the answer to your question, 12 yes, we could do these things but do them on a 13 very small scale with a limited number of 14 retailers, which really was never going to get us 15 to the promised land, okay? 16 Q. Let's still focus on program 17 implementation and tell me which of these 18 products and services was brought in-house. 19 A. By retailers? 20 Q. By retailers. 21 A. Frequent-shopper program design, 22 application processing, the -- they eliminated</p>	<p style="text-align: right;">Page 52</p> <p>1 description. 2 A. Very good. Kroger used to be highly 3 concentrated in the East Coast. All their 4 banners were called Kroger, okay? They had -- 5 I'll take a guess and say they had what are -- 6 twelve divisions that covered a lot of the major 7 cities in the East and some Midwest and Southwest 8 cities. But they now own Ralph's in LA, they 9 own -- they own a litany of major retailers that 10 make them truly national in scope. They have 11 more than doubled in size. 12 So when you have an enterprise that 13 large, you -- any consolidated business is 14 looking to eliminate redundancies, find 15 efficiencies, and you get to a certain size where 16 you no longer need to go outside necessarily to 17 have somebody manage these services for you. You 18 either invest in those services yourself or you 19 hire the people and bring them on board to do it 20 for you. 21 Kroger is a good example, Dunnhumby, 22 who is now a major database marketing force</p>
<p style="text-align: right;">Page 51</p> <p>1 middlemen in terms of card design, production and 2 issuance, they went right to the card 3 manufacturers, and the same holds true for 4 replenishment. 5 Q. So all of that work now is currently 6 done in-house or by in-house retailers? 7 A. I don't think that that's a universal 8 truth in terms that there are retailers out there 9 that still subcontract this stuff out. But 10 largely, I think if you go to the large 11 retailers, where you really need to be, where a 12 business of our, you know, appetite would need to 13 be in order to focus resources against these 14 things, these types of things are all easily done 15 in-house, you know. Kroger -- Kroger today is a 16 conglomerate that, you know, let's -- are you 17 familiar with the retail structure across the 18 country through your exercise here? Have you 19 gotten more familiar with it? 20 Q. I'm not -- "familiar" is a relative 21 term. I'm what you called an informed 22 generalist, if I could pick up on your</p>	<p style="text-align: right;">Page 53</p> <p>1 internationally, has been partially acquired by 2 Kroger to do all these things. So I think that's 3 hopefully a representative analogy of the trend 4 that's taking place in the industry. 5 Q. And those customers, those types of 6 customers are News America Marketing's core 7 business, large customers like Kroger? In other 8 words, is that your target? 9 MR. KATZ: Objection. 10 A. They are part of our target. They 11 are a big part of our target. 12 Q. You don't go after the smaller 13 retailers, I take it? 14 MR. KATZ: Objection. 15 A. We have smaller retailers in our 16 network. But, you know, it's -- it's the 80/20 17 rule, I guess, you know, 20 percent of the 18 players represent about 80 percent of the 19 network. And that's you know, that's just a 20 colloquial statistical pronouncement that 21 probably does reflect the way our business breaks 22 out.</p>

14 (Pages 50 to 53)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 54</p> <p>1 Q. And I'll betray my ignorance by 2 suggesting the company Duane-Read. Where do 3 they fall in the spectrum? 4 A. Well, Duane-Read is a, you know, 5 Duane-Read at that time was a fairly significant 6 retailer. I think, and to some extent, you know, 7 they still are. They are one of the larger drug 8 retailers. 9 Q. Are they in the 80 or in the 20? 10 A. They would be in the 20 on the drug 11 side of the business, yes. 12 Q. So they were a core type of client 13 for News America Marketing back in 2000? 14 A. Yeah, back in -- well, even Kroger 15 back in 2000 may have provided even, you know, 16 I'm giving you the Kroger analogy to tell you 17 what's happened with the evolution of the 18 business. That same evolution has happened, by 19 the way, with Duane-Read. Duane-Read has 20 gotten bigger. CVS has gotten bigger. 21 Walgreen's has gotten much bigger. There's been 22 consolidation there as well.</p>	<p style="text-align: right;">Page 56</p> <p>1 instructed to call on companies of all sizes or 2 are they limited in some way to whom they market? 3 I mean, I take it for example, you're not going 4 to a mom-and-pop pizza shop in Dracut, 5 Massachusetts. 6 MR. KATZ: Objection. 7 MR. PETERS: What's wrong with 8 Dracut, Massachusetts? It's one town 9 over. 10 MR. KATZ: I think you just 11 mispronounced it. 12 MR. PETERS: I could have. 13 Q. Is there a size, in other words, that 14 News America Marketing presently has as a cutoff 15 for its sales force to call on? 16 A. No, not really. I mean, I wouldn't 17 say that there's a size that cuts things off. 18 There's -- if the a retailer comes to us with 19 interest in being invited into our network, we'll 20 ascertain whether or not a retailer works within 21 our network. This there's a lot of -- there's a 22 lot of criteria that have to be addressed prior</p>
<p style="text-align: right;">Page 55</p> <p>1 All three of those players are 2 consistent with the analogy I just gave you. 3 They get to a certain point where they don't -- 4 may not subcontract for services that they would 5 have at one time. They have gotten big enough 6 that they actually develop departments internally 7 to manage those same kinds of things. 8 Q. In the companies that are not so 9 large, so that they would outsource that type of 10 work, are they of interest to News America 11 Marketing at present or are they really outside 12 your strategic focus? 13 A. Well, we use those other retailers to 14 round out our network. They are more important 15 in some markets than they are in others because 16 you're looking to provide manufacturers with a 17 scale of exposure and reach in every market in 18 which you operate. So they do have some level of 19 importance but they don't have the independent 20 scale to be of the relative importance of a 21 Kroger or Safeway or CVS or Walgreen's. 22 Q. And the sales force, are they</p>	<p style="text-align: right;">Page 57</p> <p>1 to making that decision. 2 Do we have a -- do they fit within 3 our coverage area in terms of the ability of our 4 field force to go out and service those stores? 5 Are they, you know, are they in northwest North 6 Dakota, okay? If you have, you know, Gordy's IGA 7 up in northwest North Dakota where it's going to 8 take a field rep all day to drive up there, 9 chances are pretty good they are not going to be 10 included in our network, although we have 11 explored ways of adding stores who want to be in 12 our network through some type of self-fulfillment 13 mechanism. We haven't really launched that but 14 we've talked about a way to try to do that. 15 Every opportunity of generating 16 incremental profit that falls within our margin 17 guidelines is something that we give 18 consideration to. But, you know, it's not always 19 easy to fill that bill. So I'd say the same, you 20 know, it's generally the same for all business. 21 You look at opportunities that you think merit 22 the investment, and if you can qualify that, then</p>

15 (Pages 54 to 57)

Mixon, Christopher

July 18, 2007

New York, NY

Page 58

1 you pursue it. So the same would hold true here.

2 Q. The description you just gave to me
3 of a retailer that may or may not fit within your
4 network is one that comes to you and looks for
5 services. I'm really interested in whether or
6 not there's a cutoff in your sales force, and
7 maybe you've answered the question, where the
8 retailer is just too small to merit the effort of
9 your sales force to call upon those retailers.

10 A. I'd say yes. There are retailers
11 that are too small to merit focus by News
12 America.

13 Q. Is that memorialized anywhere or is
14 that more or less determined on an ad hoc basis?
15 In other words, do you have some type of line
16 that says, "Less than a hundred million in sales
17 and we're not interested"?

18 MR. KATZ: Objection.

19 A. You know, it's not memorialized in
20 any kind of a defined document, if you will. I
21 think that, you know, periodically, as we -- as
22 we look to refresh and improve the quality of our

Page 59

1 network, we go through exercises to review what
2 we currently have, what the opportunities may be
3 that are out there and then we make decisions
4 based on that review.

5 It's not dissimilar to the way we
6 review our distribution network for FSI. We take
7 a look at the newspapers that are in our
8 circulation base and make decisions as to whether
9 or not there are papers out there that would make
10 sense being added to our circulation base or not.

11 Q. Back in 2000, how small was too
12 small?

13 A. I can't answer that. I, you know,
14 again, I don't know the answer.

15 Q. Was there a category that would fit
16 into my description of "too small" back in 2000?

17 MR. KATZ: Objection.

18 A. I don't know. I don't know.

19 Q. Was there any effort to look at the
20 retailers that CCMI had already secured as
21 clients, as customers, to determine whether or
22 not they fit within the strategic focus of News

Page 60

1 America Marketing at the time?

2 A. I'm sure that that, you know, that
3 effort was undertaken. I wasn't involved in it
4 personally. But, you know, people reporting up
5 to me would be making those decisions.

6 Q. That's something that should have
7 happened, in your view?

8 MR. KATZ: Objection.

9 A. Again, it's something that I think
10 did happen, and that's part of the way the entire
11 business operates. You're always looking for
12 ways to profit and grow your business.

13 Q. I'm going to go back now after that
14 digression to Exhibit 39. Have you looked at the
15 middle column, which is "Data Management"?

16 Are the items listed under "data
17 management" items that were available for sale
18 from SmartSource Direct during your tenure with
19 the IGroup?

20 A. I really don't know how much of this
21 stuff was truly available at that point in time.
22 I think -- I think some of it may have been

Page 61

1 available. The bigger question really is what
2 was available, competitive in the marketplace and
3 salable. And I think the answer to that question
4 increasingly became "no," and we needed to make
5 investments in these areas to try and get to that
6 point.

7 Q. Is your testimony by implication that
8 if it was available and salable, News America
9 would have sold it?

10 A. Yes.

11 Q. What effort did you make to try to
12 determine, personally determine what was
13 available and salable back in the days when you
14 were with the IGroup?

15 MR. KATZ: Objection.

16 A. You took what was available and you
17 tried to sell it.

18 Q. Well, that much I can follow.

19 A. Okay.

20 Q. What I'm wondering is if you did any
21 kind of diligence yourself.

22 A. Personally?

16 (Pages 58 to 61)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 62</p> <p>1 Q. Personally.</p> <p>2 A. No.</p> <p>3 Q. To look into what the company had to</p> <p>4 offer.</p> <p>5 A. Well, I would be part of regular</p> <p>6 weekly meetings where we'd review success against</p> <p>7 products that currently existed and I would be</p> <p>8 part of conversations that would be reviewing</p> <p>9 recommendations that were being made by the</p> <p>10 people who were managing this on what we needed</p> <p>11 and where we needed to be to be competitive.</p> <p>12 But, you know, in terms of doing,</p> <p>13 roll up my shirt sleeves and do personal analysis</p> <p>14 below that, no, I had people who worked for me to</p> <p>15 do that.</p> <p>16 Q. Who was the person or who were the</p> <p>17 people that were responsible for inventorying in</p> <p>18 CCMI?</p> <p>19 MR. KATZ: Objection.</p> <p>20 A. I don't follow --</p> <p>21 Q. And by "inventorying," I mean, I'm</p> <p>22 looking at an inventory of products and services</p>	<p style="text-align: right;">Page 64</p> <p>1 But I think they would be the people</p> <p>2 that would go through the due diligence to try to</p> <p>3 ascertain whether or not there was a viable</p> <p>4 business opportunity there or not.</p> <p>5 Q. You don't know whether or not the</p> <p>6 document we've marked as Exhibit 39 effectively</p> <p>7 reflects --</p> <p>8 A. That's this document?</p> <p>9 Q. -- yes, sir, effectively reflects the</p> <p>10 inventory that CCMI had to offer at the time of</p> <p>11 the acquisition?</p> <p>12 A. I think it actually -- accurately</p> <p>13 reflects -- I would imagine it accurately</p> <p>14 reflects what we believed to be available at the</p> <p>15 time of the acquisition. I don't know that it</p> <p>16 accurately describes those products and services</p> <p>17 that were determined ultimately to be viable</p> <p>18 after the acquisition.</p> <p>19 Q. We'll talk about that in a second,</p> <p>20 but let me go back to a statement you made a</p> <p>21 moment ago about your role with the IGroup.</p> <p>22 A. Um-hum.</p>
<p style="text-align: right;">Page 63</p> <p>1 now in Exhibit 39. When you bought the company,</p> <p>2 when News America bought the company, you must</p> <p>3 have conducted some kind of effort to determine</p> <p>4 what CCMI had to offer and how robust it was.</p> <p>5 Do you know who did that work.</p> <p>6 A. Well, we had a venture group. I</p> <p>7 mean, the process of acquisition of CCMI, what</p> <p>8 was that process like? I wasn't really involved</p> <p>9 in it.</p> <p>10 My first involvement with the -- with</p> <p>11 the IGroup was after all of these acquisitions</p> <p>12 had actually been consummated. And I was brought</p> <p>13 in after the fact and given the assignment of</p> <p>14 honing them into some type of viable and</p> <p>15 sustainable business.</p> <p>16 So -- but we would have a venture</p> <p>17 group who would go out and, you know, I think</p> <p>18 they dealt more often than not with higher-risk</p> <p>19 entrepreneurial-type businesses that hadn't</p> <p>20 really made it big, so there was always some</p> <p>21 speculative nature to that type of assignment in</p> <p>22 the first place.</p>	<p style="text-align: right;">Page 65</p> <p>1 Q. My notes reflect, earlier in the</p> <p>2 deposition, you were brought in to integrate the</p> <p>3 IGroup as a sustainable business; is that</p> <p>4 correct?</p> <p>5 A. Yes.</p> <p>6 Q. And by "integrate," that means</p> <p>7 SoftCard, Planet U and what was then CCMI or what</p> <p>8 soon to become SmartSource Direct, your role was</p> <p>9 to find the synergy between these three companies</p> <p>10 and develop a sustainable business?</p> <p>11 MR. KATZ: Objection.</p> <p>12 A. I think that was the ultimate goal.</p> <p>13 I don't think you synergize right out of the box.</p> <p>14 I think that, you know, each of these businesses</p> <p>15 had to first and foremost gain some traction</p> <p>16 independently and as they did that, we would</p> <p>17 figure out a way to integrate them -- when I say</p> <p>18 "integration," it's usually, "Integration"</p> <p>19 usually takes place to some extent on the</p> <p>20 marketing front. How do we -- how do we</p> <p>21 integrate businesses into an actionable sales</p> <p>22 initiative, and then ultimately, are there other</p>

17 (Pages 62 to 65)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 66</p> <p>1 synergies that exist that allow us to, you know, 2 create a larger business. 3 Q. So as an initial matter, you want to 4 make sure that each of these business units is 5 independently successful so you can determine how 6 the three might work in conjunction? 7 A. Well, it's certainly easier to create 8 a successful business out of, in this case, three 9 businesses that are of themselves independently 10 successful. 11 Now, unfortunately, in the IGroup 12 assignment, I was given three businesses that 13 independently had not proven their success. So 14 it was a -- it was a -- an interesting challenge, 15 to say the least. 16 Q. So in order to -- I'll make a general 17 statement -- in order to gain traction, to use 18 your words, on SmartSource Direct, you understood 19 that resources would have to be dedicated to that 20 business. 21 A. Yeah. I mean -- resources would 22 ultimately have to be dedicated to any business</p>	<p style="text-align: right;">Page 68</p> <p>1 So it's not -- it's not a question of 2 just throwing resources against the wall and 3 seeing what sticks. It's a question of 4 understanding the business and hopefully making 5 the right decisions in terms of how, when and 6 where you allocate those resources. 7 Q. Part of that process includes first 8 looking at the company, in this case SmartSource 9 Direct, and determining what they had done right 10 in the past, right? 11 MR. KATZ: Objection. 12 A. Yeah, I -- I guess one of the things 13 you would do is evaluate, you know, in any 14 project, you evaluate, you know, where you 15 started and where you're at, and, you know, 16 hopefully through that evaluation, it gives you 17 some direction on where you go in the future. So 18 to that extent, yes. 19 Q. In fact, News America Marketing 20 wouldn't have bought CCMI if it thought CCMI had 21 been unsuccessful to date, right? 22 MR. KATZ: Objection.</p>
<p style="text-align: right;">Page 67</p> <p>1 for those businesses to be successful. The real 2 question is what resources, how much resource. 3 There's different ways to reach a specific 4 objective. 5 For example, would we want to apply 6 independent accounting resources to SmartSource 7 Direct? Probably not. We'd probably want to 8 eliminate accounting resources if those resources 9 ended up being redundant and had an adverse 10 effect on the bottom-line profits of SmartSource 11 Direct as a consequence of that. 12 There's other resources that you are 13 going to want to invest in. If you find that the 14 database marketing engine that they currently had 15 is inadequate and never going to get you to where 16 you need to be, that's probably, you look at it 17 and say, "Unfortunately, what we thought we were 18 getting isn't there. We're going to have to make 19 some big investments and put some more resources 20 behind that and develop a viable product if we 21 hope to be competitive in this -- in this 22 particular area."</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. Based on what you knew of the 2 company. 3 A. I don't know that that's necessarily 4 true. I think that there have been many 5 instances where an organization saw a potential 6 business opportunity in a business that may not 7 currently be successful but you think that you 8 can make a difference, you can get a good buy on 9 that particular company and you can grow it and 10 make it successful. I don't know if that's the 11 particular case here with what was then CCMI, 12 'cause I wasn't part of that evaluation or part 13 of that acquisition or new ventures group. 14 For better or for worse, by the time 15 I was brought on to the scene, it was a News 16 America-owned company. So I had to play the hand 17 that I was dealt and that's what we tried to do. 18 Q. But in order to determine what 19 resources a company will benefit from, in this 20 case SmartSource Direct, you evaluate what the 21 company has done in your opinion correctly, and 22 what the company has done incorrectly, and where</p>

18 (Pages 66 to 69)

Mixon, Christopher

July 18, 2007

New York, NY

Page 70	Page 72
<p>1 the company might benefit from additional 2 resources; isn't that the process? 3 A. Yes. And I would add to that what 4 the company's currently doing that is correct or 5 incorrect and also, evaluating, you know, after 6 you get more experience with the company, what do 7 you do with it now. 8 Q. Did you learn, ever, what percentage 9 of the market in its market segment CCMI had 10 prior to acquisition? 11 MR. KATZ: Objection. 12 A. I can't recall. My recollection 13 would be that it -- very small. 14 Q. So you didn't learn and you don't 15 believe that it had a significant market share at 16 the time of the acquisition in loyalty card 17 programs? 18 A. You have to explain to me, what 19 market share of what? 20 Q. Well, share of selling loyalty cards 21 that are then used to develop marketing programs 22 by using information developed at the point of</p>	<p>1 Citicorp, or Citibank? 2 A. Okay. 3 MR. KATZ: You know, before we do 4 that, this is a good time, I just want to 5 take a restroom break. Can we do that, 6 and we can come back and again, I'm 7 totally indifferent on lunch. I can work 8 through it, but you let me know. 9 MR. PETERS: I'm still working on 10 breakfast. We're off. 11 (Recess taken.) 12 EXAMINATION (Cont'd.) 13 BY MR. PETERS: 14 Q. Would you describe your work with 15 Citicorp? 16 A. Citicorp POS Information Services, 17 perhaps the best way to describe my work is to 18 describe Citicorp POS Information Services. 19 Q. Yes. 20 A. Citicorp POS Information Services 21 really, at least within the grocery and drug 22 segments of the industry, invested database</p>
Page 71	Page 73
<p>1 sale. 2 A. I think in retrospect, they may have, 3 you know, their -- their -- I think their primary 4 profit, and I may be mistaken on this, but their 5 primary profit was simply brokering access to 6 plastic frequent-shopper cards. I don't think 7 that a tremendous amount of their market share, 8 if you will, in terms of executing database 9 marketing programs, I think it was 10 infinitesimally small. 11 Q. That was an emerging market back in 12 '99, wasn't it? 13 A. It's still an emerging market. 14 Q. It was a brand-new market 15 effectively. 16 A. In when? 17 Q. '99. 18 A. Absolutely not. 19 Q. How developed was the market compared 20 to today? 21 A. Substantially. 22 Q. Let's talk about your work at, was it</p>	<p>1 marketing, introduced the first loyalty programs, 2 and indeed, reached relatively significant 3 penetration in the expansion of those programs 4 prior to their ultimate closure in 1991. 5 I went to work for them in, let's 6 say, 1986. I was on the -- I wasn't part of the 7 original start-up, but I was in one of the very 8 first early waves of hires before the company 9 ramped up over the years to eventually having 10 several hundred people in the organization. It 11 was a company that was headquartered actually up 12 in Stamford, Connecticut. 13 Citibank had had a reputation under 14 John Reed, who was the CEO of Citibank at the 15 time, of funding what they called 16 "Intreprenuerial," that's with an I, 17 Intreprenuerial businesses where they would bring 18 on teams of talented people to take a concept, 19 they would fund it and grow that into larger and 20 substantial businesses. 21 The objective of Citicorp at the time 22 was to, one, develop the nation's largest</p>

19 (Pages 70 to 73)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 74</p> <p>1 important behavior database, John Reed having a 2 small belief that we'd be able to tap into the 3 latent marketing potential of that data, and 4 remarket that information for packaged goods 5 companies and other marketers for marketing 6 purposes.</p> <p>7 Secondly, there was a bit of a more 8 abstract agenda that had to do with ultimately 9 converting frequent-shopper cards into credit 10 instruments. And Citicorp already had this 11 tremendous card base in distribution around the 12 country with frequent-shopper cards. They would 13 certainly have a leg up on anyone else attempting 14 to make that happen, and I can't give you all the 15 details on this but, you know, that was a 16 challenge back then, still a challenge today for 17 a variety of reasons. But, you know, included in 18 that is our rather archaic banking laws that are 19 unique to the U.S.</p> <p>20 The first program that Citicorp 21 initiated was with Ukrops in Richmond, Virginia. 22 After they started Ukrops, that's when I was</p>	<p style="text-align: right;">Page 76</p> <p>1 plan that Citibank had behind Citicorp POS, they 2 realized that this business would not -- their 3 forecast for generating a profit that would 4 underwrite the huge investment that was required 5 to get this whole enterprise up and running was a 6 multiyear-payback scheme before they even started 7 to see a return on that investment. But they 8 were willing to deal with that. They had a lot 9 of confidence that this was going to be the next 10 big thing.</p> <p>11 Unfortunately, all of us having lived 12 through that period, the country went into a 13 recession. Citibank is the largest consumer 14 bank. I think they were the largest lender to 15 consumers for real estate, and they were the 16 largest lender to developing nations. And both 17 developing nations, third-world countries, 18 started defaulting on loans, and the real estate 19 market went south.</p> <p>20 And, as CEOs are wont to do when 21 things like that happen, they have to figure out 22 a way to stop the hemorrhaging. And one of the</p>
<p style="text-align: right;">Page 75</p> <p>1 brought on board. I helped oversee the creation 2 of unique marketing programs and implemented 3 those programs at a variety of retailers 4 including Jewel and Dominick's, which together 5 probably constitute in excess of about 65 of the 6 ACV in the Chicago metro area.</p> <p>7 We had numerous divisions of Safeway 8 on line, including Vaughn's in California, 9 including Safeway Denver, Safeway Balt-Wash, 10 Safeway Seattle, and a number of other retailers 11 across the country. So as far as back as that; 12 and there was significant penetration had already 13 started on the frequent-shopper front.</p> <p>14 We had also actually built 15 applications for the data where we were actually 16 selling applications for the data back to retail 17 customers. There was a retail sales force at 18 Citicorp POS. There was a manufacturers' sales 19 force at Citicorp POS.</p> <p>20 Q. Why was it shut down when it was so 21 successful?</p> <p>22 A. Well, it was shut down because the</p>	<p style="text-align: right;">Page 77</p> <p>1 ways to do it was to take a look at some of these 2 businesses that they had high hopes for but 3 wouldn't see a payback for, for many years. So 4 ultimately they pulled the plug on the entire 5 project.</p> <p>6 Now, that left a number of all of 7 these retailers with a huge problem. They had -- 8 they had these very robust frequent-shopper 9 programs, and these were shopper programs that 10 were even back then, you were identifying 11 somewhere around 70 percent of all transactions, 12 close to 90 percent of all volume was actually 13 being -- you could identify down by the household 14 level through the use of frequent shopper cards. 15 So that's -- that's big.</p> <p>16 Into that void stepped a company that 17 was formed by two brilliant gentleman, John 18 Schultz and Don Irion, who were two of the key 19 early players at Citicorp POS. They had been 20 moved out of the company by senior Citicorp 21 people prior to the demise of the Citicorp POS 22 Information Services, and they immediately went</p>

20 (Pages 74 to 77)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 78</p> <p>1 to work building, taking advantage of all of 2 their learning at Citicorp, building their own 3 platform. The name of that company they formed 4 was called Retail Marketing Systems. Retail 5 Marketing Systems then, unlike Citicorp, they had 6 no aspirations to own the data. Citibank 7 required that they co-own the data with retailers 8 so they wouldn't be restricted in the application 9 of that -- of those purchase behavior databases. 10 That was a problem for some retailers. 11 John Schultz and Don Irion wanted to 12 take the path of least resistance. They decided 13 they would become primarily a data management 14 company. They would sell software and host that. 15 And they were very successful in expanding the 16 RMS product, which I believe was called Market 17 Expert, to many if not most of those players who 18 had been dependent upon Citicorp POS previously. 19 So your question is, how developed 20 was the business back then? Very developed at 21 that point in time. And frankly, up until the 22 time that I was put over there, and I kept in</p>	<p style="text-align: right;">Page 80</p> <p>1 one-size-fits-all program that would 2 significantly reduce the company's cost 3 associated with hosting all of these disparate 4 platforms across multiple retailers across the 5 country. 6 And that program failed and 7 ultimately they pulled the plug on the entire 8 business. But that is the evolution of the 9 database marketing business in the United States, 10 and it's that same learning that ultimately was 11 exported to Europe and embraced by a company 12 named Dunnhumby, who did a pretty good job of 13 applying those -- that same perspective to 14 businesses in Europe. They were successful 15 there. Kroger has since taken a big piece of 16 that and brought that in-house at Kroger. Those 17 people actually work on-site at Kroger now. So 18 that's kind of what's going on in the industry. 19 Q. How is customer behavior data 20 collected under the Citicorp model? In other 21 words, was it at the point of sale and if so, how 22 did that work?</p>
<p style="text-align: right;">Page 79</p> <p>1 touch with these people, I actually brokered 2 meetings with News America and RMS at one point 3 in time, as a possibility of being interested in 4 partnering with them or even acquiring them up 5 until the time that SmartSource Direct was 6 assigned to me, I'd never heard of CCMI. They 7 weren't -- they were a non-entity in the database 8 marketing business as far as I was concerned. 9 I think their -- I think a lot of the 10 stuff that we had was aspirational stuff, but 11 they may have had some capability of differing 12 on, but the -- their real -- their real business 13 I think was just as the middleman in providing 14 frequent-shopper cards. So -- but my position, 15 back to Citibank, my position was really to, one, 16 develop and manage relationships with retailers; 17 two, manage a group of people who had a similar 18 assignment; three, develop, design, develop and 19 implement unique marketing platforms that a 20 King's Supers in Denver could use to 21 differentiate themselves from Safeway Denver, and 22 then ultimately to try and represent a syndicated</p>	<p style="text-align: right;">Page 81</p> <p>1 A. Well, it's probably different for 2 different retailers. You know, if you -- from a 3 consumer perspective, when you walk into a retail 4 store and you scan an item across a scanner, 5 everything looks neat and clean as long as your 6 receipt comes out and shows you all the items 7 that you bought and the total comes up correctly. 8 In reality, retailers have highly 9 bastardized systems that they have customized to 10 complement whatever their specific needs are in 11 any one given area, and there's an evolution that 12 takes place in the hardware design for front 13 ends. Back when Citicorp first introduced the 14 system, there were some front-end systems that 15 could allow to you design certain marketing 16 programs where you could actually do things like 17 have scan-downs right at the point of sale where 18 the items that normally would have been put on 19 sale at shelf, you could only get those items on 20 sale now if you -- if you showed your card and 21 scanned the item at the front end. 22 IBM had that type of competency. NCR</p>

21 (Pages 78 to 81)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 82</p> <p>1 had that type of competency, but not across all 2 generations of their equipment. And if you look 3 at a Kroger, for example, and I don't know this 4 for a fact, but my conjuncture would be that 5 Kroger across all of their stores probably has 6 multiple generations of front-end systems out 7 there. How those systems are hosted also becomes 8 an issue because the hosting competency of one of 9 their divisions is very different from the 10 hosting competency of another division. 11 So by hook or by crook, we would, 12 Citicorp would eventually get the data. Some of 13 it might be direct feed, some of it might be on 14 computer tapes, and that was part of the problem 15 of the business. The infrastructure costs of 16 trying to sort through all that was, it was very, 17 very expensive at that point in time. It's 18 gotten much better because targeting has come 19 into its own. It's a requirement of most 20 retailers now to at least have that competency in 21 the front end even if they are not capitalizing 22 on it. It comes as part of the standard</p>	<p style="text-align: right;">Page 84</p> <p>1 Citicorp days, was it? 2 MR. KATZ: Objection. 3 A. Well -- 4 Q. It was more primitive than that. 5 A. Well, even now you paint a little bit 6 more of a romantic picture about the data that 7 actually exist. 8 It's not that personal. To say that 9 they know who you are is a misnomer. The way the 10 data is used is for marketing application 11 purposes, they don't really care who you are 12 other than the fact that you are a component in a 13 bucket of consumers who have similar purchase 14 behavior, if that makes any sense. And the 15 bucket is very leaky. You have -- you have can 16 customers who are leaving your franchise or 17 moving out of town and there's all kinds of 18 sanitation efforts that have to go in to keep the 19 data robust and current. 20 And the different retailers have 21 different competencies in how they are able to 22 utilize real-time data. Catalina, for example,</p>
<p style="text-align: right;">Page 83</p> <p>1 software/hardware configurations that most of the 2 retailers buy and put into the front end now. 3 Q. And that wasn't available back in the 4 Citicorp days? 5 A. It was available in some instances 6 and not available in others. 7 Q. So a lot of the data you had to get 8 on purchase behavior, you had to acquire it from 9 the retailer directly. 10 A. Well, there's no difference there 11 now. I mean, the only way you're going to get 12 your data is to acquire it from the retailer. 13 Q. Right. 14 A. It has to come to you from the 15 retailer in some way, shape or form. 16 Q. What's the difference now? When I go 17 through the grocery line, there's a machine there 18 that scans my frequent-shopper card. It knows 19 who I am, it knows all the items I buy; and that 20 information is warehoused presumably somewhere, 21 whether it's at the store level or otherwise. 22 That wasn't really the way it was back in the</p>	<p style="text-align: right;">Page 85</p> <p>1 has a reactive system that, you know, you think 2 you're getting that coupon because they know who 3 you are and what you buy. When in reality you're 4 getting that coupon simply because you purchased 5 a product that anybody who scans that product is 6 going to trigger the same response. 7 So it's not, you know, it's not quite 8 as Buck-Rogerish yet as you might conceive it to 9 be, but it has the portent of getting us there 10 some day. 11 Q. Were you involved in any of the 12 technical aspects of developing the applications 13 used to track customer behavior when you were 14 with Citicorp? 15 A. The last thing you would want me to 16 do is be opening up a box and start working on 17 it. No. 18 Q. You were the business guy. 19 A. I would work on the marketing side. 20 My primary responsibility was to create marketing 21 programs, marketing applications for the data, 22 and then to represent the applications of those</p>

22 (Pages 82 to 85)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 86</p> <p>1 data to try and develop revenue streams, either 2 direct cash payments or barter or otherwise 3 coming back in from the retailers. 4 Q. So when you came on board to the 5 IGroup, did you consider yourself to have some 6 expertise in targeting marketing, relying on data 7 generated at the point of sale? 8 A. Yes. 9 Q. Did you bring that expertise into the 10 office, so to speak, and help develop programs 11 and help CCMI grow, or SmartSource Direct grow? 12 A. Well, yes. I think one of the 13 reasons I was assigned to the project was because 14 I probably, I definitely had more expertise in 15 the area with News America Marketing, and to a 16 large extent, with -- more expertise than most 17 people in the industry. 18 But the fact of the matter is, there 19 wasn't a huge opportunity to develop applications 20 for the data, per se, because the data mining 21 engine wasn't there. You need to have an engine 22 that allows you to -- first of all, you need to</p>	<p style="text-align: right;">Page 88</p> <p>1 weren't able to -- they weren't able to scale it 2 in a way that, using what they had, would have 3 any hopes of growing and being successful. 4 Ultimately, it was a decision of the 5 organization, which Bob and Ann concurred in, to 6 make a significant investment in a, what was 7 perceived to be a state-of-the-art platform. 8 Q. Do you remember the name of that 9 platform? 10 A. I believe the name of the platform 11 was Epiphany. 12 Q. Do you know how long it took to get 13 Epiphany up and running? 14 A. I can't recall. I mean, any time you 15 get involved in these highly sophisticated 16 platforms, you know, we have a tendency, if our 17 head of IT says that he'll have something up 18 in -- in the third quarter, it's never the first 19 day of the third quarter, it's always the last 20 day of the third quarter. And oftentimes, it's 21 the third quarter of the following year. 22 So it's very, very difficult, you</p>
<p style="text-align: right;">Page 87</p> <p>1 have access to the data. Secondly, you need to 2 have the platform that allows you to submit 3 queries to -- to create a universe, tangible 4 universe of consumers that you can then take to a 5 manufacturer and say, "I think we can do this, I 6 think you should do this, this will provide 7 scale. There are line models that basically say 8 it's going to the cost you X. Based on our 9 forecast, this will be the return on your 10 investment," and you sell them on that. 11 We didn't have all that. That's what 12 News America spent a considerable amount of 13 money, frankly, a lot of it based on Bob and 14 Ann's recommendations, to build the platform that 15 would get us to the point where we could start 16 doing that. 17 Q. Well, they were doing that when they 18 were acquired by News America Marketing, weren't 19 they? Didn't they have retail programs that they 20 had been successful at selling, relying on data 21 generated at the point of sale? 22 A. Yes. They had some stuff up but they</p>	<p style="text-align: right;">Page 89</p> <p>1 know, it's all projected best thinking whenever 2 you get your hands into one of these highly 3 complex software platforms that have to be highly 4 customized for your business. It's, you know, 5 it's an educated guess on how long it's going to 6 take to get it up, and I think that's the truth 7 with Epiphany, it's the truth in our experience 8 with Seibel. All of these big systems have, you 9 know, have a major challenge in getting them to 10 where you want. 11 Q. Do you remember the name of the 12 application that CCMI was using or SmartSource 13 Direct was using at the time you came on board? 14 A. I don't. 15 Q. "POS," is that familiar? 16 A. "POS" is a generic term referring to 17 "point of sale." So I doubt that's it. But 18 maybe. I can't recall. 19 MR. PETERS: Can I go off the record? 20 (Discussion off the record.) 21 Q. Was there an effort made to use what 22 was in existence, scalable or otherwise, until</p>

23 (Pages 86 to 89)

Mixon, Christopher

July 18, 2007

New York, NY

Page 90

1 such time as Epiphany or some other application
2 that was scalable was available?

3 A. Well, I believe there was, to the
4 extent that we were satisfying any existing
5 customers that may be there. But in terms of --
6 in terms of looking at the platform that existed
7 and saying, "This is something that we want to
8 build around, because we can scale it," I think
9 the decision from our, you know, from our team
10 managing that business was, it's not going to get
11 us there. We have to, you know, we are willing
12 to make that bigger investment in a system that
13 would get us there.

14 There was a lot of -- a lot of work
15 went into defining that system, you know,
16 modeling how that, you know, how that system
17 would preferably work and then researching
18 options for us which resulted ultimately in
19 the -- in the purchase of Epiphany.

20 Q. Were you involved in the decision to
21 acquire Epiphany?

22 A. Well, I was involved in it to the

Page 91

1 extent that, you know, I guess ultimately the
2 decision is mine to some extent along with the
3 other executive committee members who are
4 normally, have to step up and comment on
5 investments of that size.

6 But I think we would rely on, you
7 know, our chief technical officer who, at that
8 time, I believe was Dave Benson, who is a highly
9 qualified individual who is now the chief
10 information officer for all of News Corp. So I
11 think with those credentials, if Dave told me,
12 out of everything that's out there, this is the
13 one that holds the most promise, as you probably
14 would, I would say, "Dave, I don't understand any
15 of the engineering aspects of this thing; but if
16 you say, let's do it, let's do it."

17 Q. Was Epiphany used in any other
18 business segments other than SmartSource Direct?

19 A. Yeah, I think Epiphany had some added
20 utility, as I recall, but I can't tell you
21 exactly what that utility was.

22 Q. What was the effective purpose for

Page 92

1 acquiring Epiphany?

2 A. I think the -- the purpose in terms
3 of SmartSource Direct was to use Epiphany as a
4 data mining tool that would allow us to query the
5 database and come up with, you know, solutions in
6 the sense that we had that universe of households
7 that corresponded to a criteria that went into
8 the machine and resulted in our having a salable
9 product.

10 Q. Were you involved in the negotiations
11 that led to the acquisition of these Epiphany
12 licenses?

13 A. No.

14 Q. Was that Dave Benson?

15 A. I don't know.

16 Q. Do you know if Bob Fireman was
17 involved?

18 A. I don't know.

19 Q. Do you know if he should have been
20 involved, from your perspective?

21 A. Wouldn't have been -- wouldn't have
22 been my -- my decision. You know, I can't really

Page 93

1 comment on that.

2 Q. Did anyone else at News America
3 Marketing have any in-house expertise in loyalty
4 marketing, relying on data developed at the point
5 of sale? We've spoken about yours. Is there
6 anyone else on your team that had such
7 experience?

8 A. Um -- it's not that difficult a
9 concept to grasp. You know, you're -- if you're
10 involved in the world of marketing, you
11 understand the significance of being able to
12 refine your target based on, you know, known --
13 based on information, more information and less
14 information.

15 So to that extent, I would say yeah,
16 there's a number of people within the team that
17 fully grasp the concept of database marketing
18 and, like any business, you know, this was a
19 business that didn't have a lot of people, that
20 had hands-on experience with it, anyway.

21 But, you know, Citicorp POS

22 Information Services had very few people when we

24 (Pages 90 to 93)

Mixon, Christopher

July 18, 2007

New York, NY

Page 94

1 started and we'd bring qualified marketing people
2 on board and they were expected to and did ramp
3 up within a matter of weeks, so -- and gain, you
4 know, a high degree of competency in that length
5 of time.

6 So to that extent, were there people
7 that had a history of database marketing at the
8 time that I was assigned to SmartSource Direct?
9 I would say yeah, by that time, Henry Lellouche
10 had -- had had quite a bit of experience with it,
11 and was probably approaching the point where he
12 would be considered expert relative to the
13 general marketing population.

14 Q. I take it you had no role in
15 negotiating the contract between News America
16 Marketing and Ann Raider and Bob Fireman?

17 A. Not whatsoever. Never even seen it.

18 Q. You have not spoken to anyone other
19 than perhaps Mr. Katz or someone from his law
20 office about that contract?

21 A. I've heard bits and pieces about it.

22 But, you know, not enough to even really have any

Page 95

1 real, to be able to fathom how it's constructed
2 or how it works. It's my understanding in
3 retrospect, and I didn't -- I didn't know this
4 until recently, that there was a contest over
5 some kind of compensation provision or earn-out,
6 I believe it was called, in the agreement.

7 But that's relatively new information
8 to me. I know very little about it.

9 Q. You don't recall any discussion with
10 Ann Raider or Bob Fireman or communication with
11 either of them during your tenure with the IGroup
12 about their concern over their earn-out?

13 A. If they raised it with me, I really
14 have very little -- no recollection on it. My
15 focus at the IGroup was, I really wasn't too
16 concerned about individual compensation. I was
17 concerned about it being a successful business.
18 Maybe my personal compensation.

19 Q. Let me show you a document that was
20 marked -- don't let that 39 go too far, I'm going
21 to have one more column to discuss -- but let's
22 take a look at Exhibit 33 for a moment.

Page 96

1 (Handing document to witness.)

2 Q. These are notes of an executive
3 committee meeting that took place in September of
4 1999. You're shown among the people present, at
5 least you're listed on the first page. And at
6 the time, your title was "In-Store" -- your
7 agenda was "In-Store Sales Issues." I need to
8 focus on that. What I want you to look at,
9 please, is the page that's stamped NAM 5090.

10 A. Okay.

11 Q. Take a look at the discussion and see
12 if you recall Ann Raider pitching the CCMI
13 business to the executive committee.

14 A. I have no recollection of it. This
15 is -- this is four hundred executive committee
16 meetings ago. So it's, you know, we have an
17 executive committee meeting every Monday. And
18 unless there's some seminal event that happened
19 at that meeting, I'd be hard pressed to recall --

20 Q. You don't mind if I ask, though, do
21 you?

22 A. Certainly, ask.

Page 97

1 Q. So now you've taken a look at it. Is
2 any of the information contained in this
3 discussion information that you recall either
4 from the meeting or otherwise?

5 A. Well, yeah, otherwise, these are all
6 just, you know, this is the business that we were
7 involved in. So to some extent, I would say yes
8 to that, that --

9 Q. Do you remember learning that CCMI
10 had issued about half of all of the loyalty cards
11 that had been issued in the industry, fifty
12 million out of a hundred million?

13 A. I think -- if I look at that, I think
14 it's probably a bad number. I don't think
15 it's -- I don't think it's correct. No, I don't
16 recall that.

17 Q. And the notes reflect that there are
18 80 million cardholders that represent fifty
19 million households and that CCMI has access, or
20 "we," I suppose News America Marketing, has
21 access to all that data, is that consistent with
22 your memory back then in 8/99?

25 (Pages 94 to 97)

Mixon, Christopher

July 18, 2007

New York, NY

Page 98

1 A. Absolutely not. I don't think
2 it's -- I don't think it's correct information.
3 The fact that it was presented by these two
4 people at this meeting doesn't necessarily make
5 the information correct. I don't think it is
6 correct.

7 Q. What did you do to learn about CCMI's
8 business when you came on board? I take it it
9 was important to do.

10 MR. KATZ: You're referring to when
11 he came on board the IGroup?

12 MR. PETERS: Yes.

13 A. Well, I had numerous meetings with
14 Bob Fireman and Ann. I had -- I had regular
15 reviews with Henry. I visited Braintree on
16 numerous occasions and subsequently, our Boston
17 office after we relocated Bob and Ann there, on
18 numerous occasions. So I mean, I can't tell
19 you -- it wasn't a course that we offered on it.
20 So it was whatever you normally do to, you know,
21 we just go through a process of discovery,
22 working with the people who are assigned to that

Page 99

1 business.

2 Q. Planet U and SoftCard were also on
3 your plate.

4 A. That's correct.

5 Q. Let me take it some smaller pieces.
6 Was a hundred percent of your professional time
7 during the time you were with the IGroup
8 dedicated to the IGroup, or did you have other
9 roles and responsibilities within News America
10 Marketing?

11 A. I was still a member of News America
12 Marketing's executive committee, which would
13 require that I spend about four hours of most
14 Monday mornings involved with that committee.

15 But beyond that, I was totally
16 dedicated to the IGroup.

17 Q. And you were working 40, 50 hours a
18 week?

19 A. Oh, I wish I could only -- I would
20 only have to work 40, 50 hours a week. No, we
21 put in long hours here. On any given week, if
22 I'm traveling, you know, then and now, I would

Page 100

1 say the normal work week is closer to 80 hours if
2 not more. It's totally dedicated to the
3 business. There really isn't much downtime when
4 you're traveling. You're either working with
5 clients, working in the office or personalizing
6 the business with staff.

7 The same applies to the IGroup. Days
8 where I'm in town at the office, it wouldn't be
9 unusual to be in the office by seven or 7:30 in
10 the morning and my wife would have dinner on the
11 table for when I got home about 8:30 at night.
12 So that gives you an idea of what kind of
13 schedule we kept.

14 Q. Can you divide up your time among the
15 SoftCard, Planet U and SmartSource Direct
16 business units within the IGroup?

17 A. Difficult to do, because we would
18 have different initiatives in place on each one
19 of those businesses that at times would require
20 me to spend a disproportionate amount of my time
21 on one versus the other.

22 But I think over the course of time,

Page 101

1 there would be a fairly equal distribution across
2 all three of those -- those different issues,
3 direct, SoftCard and Planet U.

4 I was on the board of Planet U and on
5 the board of SoftCard. We didn't acquire those
6 companies. So I had to spend at times a little
7 bit more time as a consequence of those
8 responsibilities, but I think it probably evened
9 out over time.

10 Q. And some of the time you spent on
11 SmartSource Direct's business, was spent talking
12 to Ann Raider and Bob Fireman, I take it?

13 A. Sure.

14 Q. Was there input and insight solicited
15 by you in making business decisions about that
16 business?

17 MR. KATZ: Objection.

18 A. Yes.

19 Q. And did you encourage Henry Lellouche
20 to solicit Ann Raider's input was Henry was
21 making decisions about that business?

22 A. I think Henry did solicit their

26 (Pages 98 to 101)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 102</p> <p>1 input, as did I. Probably relied on their input 2 less and less as time progressed, because their, 3 frankly my own personal point of view is, their 4 credibility became more and more suspect as we 5 moved through the process. 6 I think that, you know, their -- Bob 7 especially has some eccentricities that guide his 8 judgement and I think the judgement often ends up 9 being flawed and, as a consequence, it's like 10 anything else, if you have somebody whom you 11 believe repeatedly brings you valued counsel that 12 helps you form an intelligent opinion that's 13 going to help you successfully drive the 14 business, and their motivation is primarily for 15 the success of the business, you're not only 16 going to invite them into that decision process 17 but encourage them in that process. 18 I think that was probably the 19 relationship that I had with Bob and Ann early in 20 the process. I think they failed to bring value 21 to the proposition to the extent that I would 22 rely on them as much later in the process.</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. Can you give me an example of that? 2 A. There -- as I recall, there was a 3 project that he wanted us to get more involved 4 in. This was going to be a surrogate for 5 traditional Wells Fargo-type money transfers to 6 foreign countries and things like that, taking us 7 in a direction that was far afield from where we 8 wanted to go as an organization. 9 I think there were some instances 10 where Bob worked on projects that were 11 successful. They were predicated on ideas that 12 didn't originate with Bob Fireman. They came 13 from other sources, like our Toshiba, there was a 14 settlement for Toshiba, a lawsuit against Toshiba 15 Computers, as I recall, that we ended up 16 facilitating through a card-based program. 17 We -- we had hoped to get -- seemed 18 to be a fairly appealing proposition. We 19 assigned Bob to try and, you know, take that to 20 the next level. He wasn't able to do that. He 21 never gained much traction with that. 22 He -- I can't recall a lot of</p>
<p style="text-align: right;">Page 103</p> <p>1 Q. Can you give me specific examples 2 that highlight that? 3 A. I don't know that I can. You know, 4 it's something that just occurs on an 5 evolutionary scale as you move through time. 6 Bob, you know, Bob and Ann, as I 7 recall, I think one of their problems was they 8 refused to embrace the standards of the 9 organization. I know Henry had -- had some 10 problems in terms of getting Ann to adhere to 11 things like call frequency standards; and people 12 that were brought on board who worked for Ann 13 wanted to march to a drummer that was very 14 different than the drummer that beat the beat 15 that News America's sales forces generally 16 followed and were successful doing it. I think 17 that was frustrating. 18 I know Bob Fireman, you know, Bob had 19 ideas that, as I recall, that were often so far 20 afield of where we wanted to go that, you know, 21 they would not ever be seriously considered as 22 part of an eventual solution for the business.</p>	<p style="text-align: right;">Page 105</p> <p>1 instances, you know, specifically to tell you 2 now, it's been so many years. But, you know, I 3 just -- let it suffice to say that my reliance on 4 Bob's counsel, you know, waned as we moved 5 through time. 6 Q. The foreign banking issue that you've 7 referenced briefly in that last response, did 8 that have to do with the Hispanic community? 9 A. Yes, I believe it did. 10 Q. And your view was that that was 11 outside of the core business for News America and 12 therefore really was a bad idea? 13 A. I think we took a look at it and I 14 think we decided to pass on it. 15 I think, you know, it wouldn't be 16 unusual for us to give direction to both Bob and 17 Ann that they would believe they still had, you 18 know, was still under their authority to accept 19 or not accept. I think Bob and Ann had a hard 20 time dealing with the fact that they worked for 21 News America Marketing and didn't have the 22 independence that they may have craved as owners</p>

27 (Pages 102 to 105)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 106</p> <p>1 of their own company.</p> <p>2 Q. Early on, when you first came on</p> <p>3 board with the IGroup, was there some type of</p> <p>4 protocol for consulting with Bob Fireman and Ann</p> <p>5 Raider about decisions that affected the</p> <p>6 business? In other words, was that something</p> <p>7 that was expressly encouraged?</p> <p>8 MR. KATZ: Objection.</p> <p>9 A. I'm not sure I understand your</p> <p>10 question.</p> <p>11 Q. Let me give you a specific example so</p> <p>12 as not to be disembodied.</p> <p>13 There was a guy named Bill Adam,</p> <p>14 remember him?</p> <p>15 A. Yes.</p> <p>16 Q. Bill was removed from, or I should</p> <p>17 say, he left SmartSource Direct and went and</p> <p>18 started working on the Epiphany project.</p> <p>19 Do you remember that in a general</p> <p>20 way?</p> <p>21 A. I don't know that you'd say he left</p> <p>22 SmartSource Direct. I mean, SmartSource Direct</p>	<p style="text-align: right;">Page 108</p> <p>1 happened?</p> <p>2 MR. KATZ: Objection.</p> <p>3 A. I can't really comment on it. I</p> <p>4 don't know.</p> <p>5 Q. Were you involved in the decision?</p> <p>6 A. I was aware that the Bill Adam was</p> <p>7 moving to complement the Epiphany project, so,</p> <p>8 yeah, I was aware of the move. I didn't -- if I</p> <p>9 had disagreed with it, it wouldn't have happened.</p> <p>10 Q. You didn't talk to Ann Raider or Bob</p> <p>11 Fireman about this decision?</p> <p>12 A. I can't recall if I did or not.</p> <p>13 Q. You didn't try to get their buy-in, I</p> <p>14 take it?</p> <p>15 A. I can't recall if I did or not.</p> <p>16 Q. And you can't recall whether Henry</p> <p>17 Lellouche or anyone else did, either.</p> <p>18 A. No.</p> <p>19 Q. And in terms of hiring employees for</p> <p>20 the SmartSource Direct company business unit</p> <p>21 within the IGroup, is that something that you</p> <p>22 would have sought Ann Raider's and Bob Fireman's</p>
<p style="text-align: right;">Page 107</p> <p>1 ultimately was a product of News America</p> <p>2 Marketing. I think Bill Adam went to work on the</p> <p>3 Epiphany project in part due to his SmartSource</p> <p>4 Direct expertise to help guide the development of</p> <p>5 that project.</p> <p>6 Q. Well, let's take that as an instance.</p> <p>7 A. Okay.</p> <p>8 Q. Was Ann Raider or Bob Fireman</p> <p>9 consulted about that decision to take Bill Adam</p> <p>10 from the SmartSource Direct team, and working</p> <p>11 directly with that team, and ship him off to</p> <p>12 another aspect of the IGroup's business?</p> <p>13 MR. KATZ: Objection.</p> <p>14 A. I have no idea if they were contacted</p> <p>15 or if there was any real requirement to, you</p> <p>16 know, contact them. Get their approval, you</p> <p>17 mean?</p> <p>18 Q. Talk to them about it. Find out</p> <p>19 whether or not they thought it was a good idea.</p> <p>20 Do you know whether it happened?</p> <p>21 A. I have no idea.</p> <p>22 Q. Was that something that should have</p>	<p style="text-align: right;">Page 109</p> <p>1 participation in?</p> <p>2 A. It depends upon what time during the</p> <p>3 evolution of the business. If it was early in</p> <p>4 the evolution of the business, yeah, I think Bob</p> <p>5 and Ann would probably have been consulted. I</p> <p>6 think as time progressed, we probably would have</p> <p>7 been less dependent upon their opinion.</p> <p>8 Q. If there was a question about</p> <p>9 spending money on technology, Epiphany or</p> <p>10 otherwise, is something that you would have got</p> <p>11 Ann Raider's input on and Bob Fireman's input on?</p> <p>12 A. I believe their input was obtained.</p> <p>13 I believe Bob Fireman was a big proponent of</p> <p>14 Epiphany.</p> <p>15 Q. Do you remember that he was</p> <p>16 interested in only acquiring, or thought that it</p> <p>17 was only necessary to acquire a few licenses?</p> <p>18 A. No.</p> <p>19 Q. Do you remember how much money was</p> <p>20 charged to the SmartSource Direct business unit</p> <p>21 for the acquisition of Epiphany?</p> <p>22 A. No.</p>

28 (Pages 106 to 109)

Mixon, Christopher

July 18, 2007

New York, NY

Page 110	Page 112
<p>1 Q. \$900,000 sound, or refresh in any</p> <p>2 way?</p> <p>3 A. I have no idea.</p> <p>4 Q. In terms of developing budgets, is</p> <p>5 that something that Ann Raider should have been</p> <p>6 consulted on or Bob Fireman should have been</p> <p>7 consulted on?</p> <p>8 MR. KATZ: Objection.</p> <p>9 Q. Talking about budgets for CCMi or</p> <p>10 SmartSource direct.</p> <p>11 A. Well, the budgetary responsibility</p> <p>12 for SmartSource Direct was practically Henry</p> <p>13 Lellouche's. So to the extent to which Henry</p> <p>14 needed their assistance in developing that</p> <p>15 budget, he would reach out to them. If he didn't</p> <p>16 need their assistance, he wouldn't.</p> <p>17 Q. Understanding the business as you do,</p> <p>18 early on, don't you think Henry was almost</p> <p>19 required to speak with Ann Raider and Bob Fireman</p> <p>20 to understand the business with sufficient</p> <p>21 precision to develop an accurate and achievable</p> <p>22 budget?</p>	<p>1 work with him. I think that -- you know, I think</p> <p>2 if -- it's -- I think it was inclusive based on</p> <p>3 my work with Henry.</p> <p>4 Q. Did the name change from CCMi to</p> <p>5 SmartSource Direct, is that something that should</p> <p>6 have involved Ann Raider and Bob Fireman's input?</p> <p>7 A. No.</p> <p>8 Q. Do you know whether or not they were</p> <p>9 consulted about changing the name?</p> <p>10 A. I don't. The fact of the matter is</p> <p>11 that part of the value that News America</p> <p>12 Marketing brings to the marketplace and the</p> <p>13 advantage of having a suite of products</p> <p>14 recognized as coming from one company has been</p> <p>15 proven to be a highly successful way to market</p> <p>16 our services. So you'll notice most of our</p> <p>17 products and services have the word "smart" in</p> <p>18 them. And, you know, the -- you know,</p> <p>19 SmartSource family of products is who we are.</p> <p>20 You know, we're not -- we're not</p> <p>21 necessarily recognized around the world by</p> <p>22 SmartSource, but we're recognized enough to bring</p>
Page 111	Page 113
<p>1 MR. KATZ: Objection.</p> <p>2 A. Henry's pretty good with numbers.</p> <p>3 He's a, you know, he's got a strong financial</p> <p>4 background. So I would have to say the answer to</p> <p>5 that is, not necessarily. If Henry had questions</p> <p>6 that he needed resolved, and the only place to</p> <p>7 get those questions answered was Ann or Bob</p> <p>8 Fireman, I think he would go to them.</p> <p>9 If Henry could come up with the</p> <p>10 answer sans their involvement, that's his --</p> <p>11 that's his election to do or not to do. So</p> <p>12 that's the best way I can answer the question. I</p> <p>13 don't know.</p> <p>14 Q. Do you recall encouraging Henry to be</p> <p>15 more inclusive of Ann and Bob?</p> <p>16 A. I think Henry was very inclusive of</p> <p>17 Ann and Bob. So I don't see any reason why he</p> <p>18 would give him that direction.</p> <p>19 Q. You think he was inclusive based on</p> <p>20 your work with him or because that's the way it</p> <p>21 should have been?</p> <p>22 A. I think he was inclusive based on my</p>	<p>1 value and equity behind that name. We try to</p> <p>2 bring value to the database marketing business by</p> <p>3 including it in that broader suite of products as</p> <p>4 SmartSource Direct.</p> <p>5 Q. Did you or anyone on your behalf try</p> <p>6 to market to News America Marketing affiliates</p> <p>7 such as Fox, the NFL, Major League Baseball, in</p> <p>8 other words, these relationships, I should say,</p> <p>9 that News America has, did you market SmartSource</p> <p>10 Direct's products and services to them?</p> <p>11 A. Yes.</p> <p>12 Q. Can you tell me to whom and by whom?</p> <p>13 A. Well, the NFL, we have a -- we have a</p> <p>14 longstanding relationship with. And we have</p> <p>15 published the Superbowl Savings Spectacular</p> <p>16 program for many, many years now in SmartSource</p> <p>17 magazine. That program now has in-store</p> <p>18 components that uses SmartSource shelf talk,</p> <p>19 SmartSource coupon machines, SmartSource floor</p> <p>20 talk. It may even include components from our</p> <p>21 custom publishing business that actually is</p> <p>22 delivered at home as well.</p>

29 (Pages 110 to 113)

Henderson Legal Services
202-220-4158

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 114</p> <p>1 We do -- we do programs and have done</p> <p>2 programs in the past with our sister companies</p> <p>3 where we utilize the SmartSource products to</p> <p>4 promote their products, and --</p> <p>5 Q. If I interrupt you just briefly, I am</p> <p>6 just focused for the moment on SmartSource</p> <p>7 Direct, not --</p> <p>8 A. Oh, that wasn't your question, but go</p> <p>9 back.</p> <p>10 Q. Then let me rephrase it.</p> <p>11 A. Okay.</p> <p>12 Q. And I'll save us both a couple of</p> <p>13 minutes.</p> <p>14 A. Okay.</p> <p>15 Q. Did you or anyone on your behalf</p> <p>16 market SmartSource Direct's products, services,</p> <p>17 to the affiliated companies that we've been</p> <p>18 discussing?</p> <p>19 A. I really don't know the answer to</p> <p>20 that.</p> <p>21 Q. You didn't direct that to happen, I</p> <p>22 take it, that you can recall?</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. Back when --</p> <p>2 A. In 2000?</p> <p>3 Q. Yes.</p> <p>4 A. There wasn't -- there wasn't much of</p> <p>5 a product at that point in time that could really</p> <p>6 be overlayed because all of these products that</p> <p>7 we're talking about, generally speaking, have</p> <p>8 scale associated with them. They are big</p> <p>9 national programs. And we didn't have the</p> <p>10 ability to do big national database marketing</p> <p>11 programs back then.</p> <p>12 Q. Did you state to Henry Lellouche or</p> <p>13 anyone else on your team that you thought that</p> <p>14 Bob Fireman and Ann Raider had some kind of</p> <p>15 conflict of interest because of the earn-out</p> <p>16 component of their contract?</p> <p>17 A. Not that I recall.</p> <p>18 Q. Do you remember anyone suggesting</p> <p>19 that there was a conflict of interest?</p> <p>20 A. Not that I recall. The only conflict</p> <p>21 of interest that I recall that I became concerned</p> <p>22 about because it didn't make any sense</p>
<p style="text-align: right;">Page 115</p> <p>1 A. Well, it would be consistent with the</p> <p>2 way we go to market that, if there is a</p> <p>3 particular solution that one of our partners is</p> <p>4 looking for that would include that particular</p> <p>5 component, then yes, we definitely would have</p> <p>6 recommended it.</p> <p>7 If that solution didn't seem to be</p> <p>8 germane to that particular assignment, then you</p> <p>9 wouldn't. We don't -- we don't go with things</p> <p>10 and throw everything against the wall to see what</p> <p>11 sticks. You fine-tune what, you know, we have</p> <p>12 lots of different products. You try and</p> <p>13 custom-design the best solution for your</p> <p>14 customers.</p> <p>15 If SmartSource Direct provided an</p> <p>16 element of that solution set, then yes, we would</p> <p>17 include it.</p> <p>18 Q. Was there an effort to determine</p> <p>19 whether or not that was the case, whether or not</p> <p>20 SmartSource Direct did have products that should</p> <p>21 be marketed to these partners?</p> <p>22 A. In -- in --</p>	<p style="text-align: right;">Page 117</p> <p>1 whatsoever, we were housed in a -- like most</p> <p>2 businesses, what we try and do is improve the</p> <p>3 profitability of our business by eliminating</p> <p>4 redundancies.</p> <p>5 I'll use our Canadian operation as a</p> <p>6 case in point. A few years ago, we were</p> <p>7 generating about two million dollars in profit</p> <p>8 from our Canadian operation. Our Canadian</p> <p>9 operation had its own finance department, its own</p> <p>10 marketing department, et cetera, et cetera.</p> <p>11 We modified that. We brought all of</p> <p>12 those -- all of those areas and incorporated them</p> <p>13 into the mother company's departments, if you</p> <p>14 will, and we've grown our profit from two million</p> <p>15 to 15 million.</p> <p>16 The same focus is going to be placed</p> <p>17 on any business that we have to try and get it to</p> <p>18 the point where it's as profitable as possible.</p> <p>19 That's what we did with the SmartSource Direct</p> <p>20 business.</p> <p>21 Where we found redundancies, and</p> <p>22 where we found we could provide efficiencies and</p>

30 (Pages 114 to 117)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 118</p> <p>1 improvements, we incorporated those businesses -- 2 those components into the master business. What 3 that left us with up in Braintree is being housed 4 in a dilapidated building that you would never 5 think about bringing clients to. It was a gray, 6 dark place to work, not nice at all. 7 The alternative that we offered was 8 to have a state-of-the-art building on top of the 9 John Hancock Center in Copley Square in Boston, 10 one of the nicest locations -- you're from 11 Boston, both you gentleman are from Boston -- one 12 of the nicest locations that you can imagine, 13 creating a tremendous quality-of-work environment 14 and providing the opportunity to actually bring 15 clients into our office to engage them, entertain 16 them and to complement our selling efforts. 17 Bob Fireman, for no real reason that 18 I was aware of, was very much opposed to the 19 move, and I found out after the fact he was 20 opposed to the move because his family owned the 21 building. So to me, that's a conflict of 22 interest. It means that somebody's putting their</p>	<p style="text-align: right;">Page 120</p> <p>1 the square feet that were being allocated to the 2 now-reduced head count for Massachusetts because 3 we moved that other head count into Wilton, 4 Connecticut, and elsewhere, it was a reduced 5 square footage, I would imagine. 6 So I don't know how the two shape up. 7 I can tell you that News America Marketing, if 8 you want to look at them as a stand-alone company 9 from the IGroup, was extremely generous in the 10 way we accounted for resources provided by the 11 mother company; marketing resources, finance 12 resources, operations resources, that should have 13 been charged back to the IGroup more heavily than 14 they actually were. 15 We were very interested in incubating 16 these businesses to be successful, and it's, you 17 know, there's a certain intercompany marketing 18 that may go on where you want to you, know, you 19 want to paint as positive a picture as you 20 possibly can. 21 We had the wherewithal to do that. 22 There was a high interest, at the highest levels</p>
<p style="text-align: right;">Page 119</p> <p>1 own personal interests in front of the interests 2 of the company. That's the quintessential 3 example of conflict of interest in my book. And 4 that's, you know, that one instance, I would say 5 yes, that's where it came to my attention. But 6 beyond that, no. 7 Q. How was the space on the Hancock 8 building amortized against or charged to, is 9 probably the better word, against SmartSource 10 Direct's budget? 11 A. Like all of our -- like all of our 12 facility, it's charged on a -- on an equitable 13 share of the base being utilized by the people 14 that are in that office, I would think. You 15 know, I don't have the specific formula before me 16 for that in Boston, but generally speaking, you 17 know, that's how we would do it. 18 Q. So that space in Boston on the 19 Hancock building is substantially more expensive 20 than the space in Braintree, do you agree with 21 that, on a square-foot basis? 22 A. On a square-foot basis possibly. But</p>	<p style="text-align: right;">Page 121</p> <p>1 of the organization, in seeing that they were 2 successful. 3 Q. How did SoftCard's failure come 4 about? 5 A. Well, we can say that it failed in 6 the sense that it has not successfully been on 7 the market yet. 8 Q. How did SoftCard's failure impact the 9 IGroup? 10 A. Well, it's like everything we were 11 doing with the IGroup. You have to interest 12 that, all of these businesses that we bought, 13 Planet U, CCMI, and SoftCard, that we either 14 bought outright or bought a stake in, were all 15 entrepreneurial high-risk businesses. You know, 16 none of them had had a proven business 17 proposition. And so any time you're engaged in 18 that kind of effort, you're going to have 19 failures. You're going to have products that, 20 you know, you think are going to provide a 21 potential big profit opportunity for the future 22 but you don't know until you test them. You</p>

31 (Pages 118 to 121)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 122</p> <p>1 don't know until you challenge your assumptions. 2 You don't know until you roll your shirt sleeves 3 up and, you know, try to -- try and make it work. 4 SoftCard was that kind of a situation. 5 We actually had a very successful 6 test of SoftCard at a chain called Furr's in 7 Albuquerque, New Mexico. The consumer response 8 to it was significantly within our tolerance 9 range for success. The problem was, similar to, 10 you know, aspects of the SmartSource Direct 11 infrastructure, it wasn't scalable. As smart as 12 we think we are sometimes, you get to a certain 13 point where you think you have something and then 14 when you're ready to take to it the next level 15 you look at it and say, "This isn't going to 16 work." 17 And the SoftCard proposition wasn't 18 going to work, not because consumers didn't like 19 using the SmartCards as instruments for redeeming 20 promotions. It's because the cost, the capital 21 investment required to distribute millions of 22 SmartCards was so intensive and the risk factor</p>	<p style="text-align: right;">Page 124</p> <p>1 types of awards. 2 If you were a -- if the demographics 3 suggested that you were a head of household with 4 six people in the household, it would give you an 5 offer, higher-value offer that required multiple 6 items to be purchased. 7 If it showed that you were a 8 bachelor, single-person household, it would give 9 you a coupon value of a lesser amount but only 10 for a single item. Those types of things. 11 Consumers responded very, very well to it. Furr's 12 responded very, very well to it. They would have 13 liked us to have rolled the program out. 14 No most instances, that would 15 constitute a success. But we're not a 16 philanthropic organization. We're here to 17 generate profit, and when you looked at the 18 capital investment that would be required to roll 19 this program out nationally, we finally came to 20 the conclusion that it was too expensive and so, 21 to that extent, yeah, it failed. It failed to 22 the point that we did not roll this program out.</p>
<p style="text-align: right;">Page 123</p> <p>1 associated with it so extreme, we didn't have an 2 appetite for it. 3 Q. I spoke with Mr. Garofalo about this 4 test yesterday. My memory of his testimony is, 5 he said it failed. And that's not consistent 6 with what you recall of the Furr's test? 7 A. No, it's not consistent. Marty's 8 definition of failure is, we tested something 9 that we couldn't -- we couldn't ultimately take 10 to market and to that extent, I would agree with 11 him. If you break the component pieces down as 12 to what constitutes failure, the failure wasn't a 13 consequence of the consumer response that we had 14 with the test. 15 The consumer response was very, very 16 good. To the degree that coupon delivery systems 17 can be sexy, this was pretty sexy. You know, the 18 machine sat on shelf, you didn't have any paper 19 come out, you took your SmartCard, you plugged it 20 into the machine and pulled it out and it would, 21 based on your purchase behavior history, it would 22 be able to selectively give you one of numerous</p>	<p style="text-align: right;">Page 125</p> <p>1 Q. And SoftCard never was a profitable 2 acquisition. 3 A. Well, it remains to be seen. We 4 still -- we still have a piece of SoftCard. They 5 still exist. They are still doing, to the best 6 of my knowledge, experimental work with -- on the 7 information technology side of things. So they 8 hold several patents that govern the movement of 9 data onto and off of SmartCards. So never say 10 never. You know, we have hope that some day down 11 the road maybe that investment pays off. 12 But to date, we have no profit stream 13 coming from SmartCard. 14 Q. When I said "acquisition" I should 15 have said "investment," because that's what it 16 was. 17 A. That's right. 18 Q. How did that lack of success impact 19 the IGroup? 20 A. Well, I mean, it would have been nice 21 to have been successful there. You know, in the 22 sense that we now had a program that was scalable</p>

32 (Pages 122 to 125)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 126</p> <p>1 and we could roll out. It didn't. We were 2 working on a number of different projects. And 3 you know, to the extent that we -- I mean, it 4 impacted us to the extent that we didn't have a 5 product to roll out that we had high hopes for. 6 Q. It impacted your charge of trying to 7 roll these three companies together and develop a 8 sustainable, single business, correct? 9 MR. KATZ: Objection. 10 A. No, I wouldn't say that. You know, I 11 think you're trying to take that someplace that, 12 you know, that's not -- 13 Q. I'm just trying to ask a question. 14 A. No, not really. I mean, the entire 15 IGroup proposition was, you know, obviously, 16 experimental by nature. There were new things 17 that we were trying here. We were exploring new 18 avenues for competing in, you know, interactive 19 space. So, yeah, that particular product didn't 20 pan out. 21 But SoftCard worked on having 22 different types of delivery systems based on</p>	<p style="text-align: right;">Page 128</p> <p>1 So you can probably see that to some extent, if 2 we could do that and we would have better access 3 to data and could come up at least with 4 analytical sets of information that would give us 5 some guidance in our efforts to sell database 6 marketing programs to customers, a lot of synergy 7 there between the direct business and the 8 SoftCard business. 9 To the extent that the Planet U 10 enterprise allowed us to take purchase behavior 11 data, overlay it into an electronically-delivered 12 system that would deliver data from the Internet 13 directly to the front end of retail stores that 14 was activated with the frequent-shopper card, 15 synergies there. 16 So that was all still very much in 17 our mind throughout that time, is there a way to 18 make that happen. At the same time, we were 19 independently trying to get traction for those 20 businesses as freestanding entities. 21 Q. Was Planet U successful? 22 A. No.</p>
<p style="text-align: right;">Page 127</p> <p>1 other technology that they were involved in that 2 we continued to explore after the -- after the 3 SmartCard test was done -- 4 Q. But you didn't explore any further 5 potential synergy or interaction between SoftCard 6 and CCMI, right, once you learned that SoftCard 7 was really not going to be scalable in a 8 cost-effective way? 9 A. No, that's not true. 10 Q. You continued to work in that 11 direction? 12 A. Yeah. There -- all three of those 13 businesses, you know, this was a common 14 denominator behind all three of those businesses 15 to some extent. SoftCard had other competencies 16 that may have allowed them to assist us in the 17 streaming of customer-identified data where we 18 could actually have that data move from the front 19 end and passively be collected and viewed, 20 massaged, worked with outside of the retail 21 environment. 22 They had that technology competency.</p>	<p style="text-align: right;">Page 129</p> <p>1 Q. What happened? 2 A. Well, ultimately, their technology 3 just didn't work. It -- I'll say that it worked 4 to the extent that they could have a very sexy 5 demonstration with an interested acquirer that 6 had significant promise that would get you 7 excited and make you want to play. 8 It wasn't until you actually owned it 9 and attempted to market it and scale it that the 10 limitations of their system became known. And as 11 a matter of fact, we have reacquired the same 12 technology to date, after it's gone through 13 several iterations; there was the assets of 14 Planet U were ultimately purchased by a 15 consortium of companies under a single umbrella 16 called Transora, and that business failed. 17 Totally independent of the IGroup. 18 Transora's assets, part of Transora's 19 assets, that portion of it, the Planet U portion 20 of it was then purchased by a company called 21 QInteractive, commonly known by consumers, maybe, 22 maybe not, as Cool Savings. Cool Savings</p>

33 (Pages 126 to 129)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 130</p> <p>1 attempted to get into the on-line coupon 2 distribution business. And then QInteractive 3 over the last year sold those assets back to News 4 America and we are currently right now in the -- 5 in the introductory phase of the printed home 6 solution and will be moving back into the 7 electronic delivery platforms again in the very 8 near future. 9 Q. Did the failures of SoftCard and 10 Planet U have no impact at all on the running of 11 SmartSource Direct? 12 A. Well, the impact it would have is, as 13 we had less focus and emphasis on Direct and 14 Planet U, there was certainly more focus and 15 emphasis on, how do we take elements of the 16 assets that we have purchased and turn them into 17 profitable business enterprises, and that's what 18 we're still engaged in today. 19 Q. You said SmartSource Direct, and I 20 want to make sure you meant to say that. 21 MR. KATZ: Why don't we have the 22 answer read back. I think you might have</p>	<p style="text-align: right;">Page 132</p> <p>1 round out or discussion on this. Please take a 2 look at that page we were discussing regarding 3 CCMIS database marketing services. 4 A. This page? 5 Q. Right. We had discussed the first 6 two columns. Let's look at the last column, 7 "Data Marketing." "Data marketing" refers to 8 marketing to manufacturers, as best you know? 9 A. Well, you could have some, there are 10 applications for retailers as well. Those 11 applications on the retail side are actually a 12 little bit easier to do in a way, because they 13 are -- they are easy to compartmentalize. You 14 know, you would have things like, you'd set a 15 criteria for determining a convenience shop or 16 you would set a criteria for identifying a lapsed 17 shopper. You would have a criteria for 18 determining top shoppers. Then you'd probably 19 break the universe up into quintiles, something 20 like that, and have a different type of reward 21 coming in, dependent upon where you were nested 22 as a consumer.</p>
<p style="text-align: right;">Page 131</p> <p>1 meant to say Soft -- 2 MR. PETERS: Well, let's let him 3 figure out what he meant to say. I just 4 want to make sure I have a record. 5 MR. KATZ: Right. But I think we 6 both heard the same thing. Not a big 7 deal. 8 MR. PETERS: No. 9 MR. KATZ: And while we're off -- 10 MR. PETERS: Why don't you read it 11 back and we'll just continue down the 12 road. 13 (Record read.) 14 A. You're correct. I meant to say 15 SoftCard. 16 MR. KATZ: Off the record for a 17 minute. 18 (Discussion off the record.) 19 (Recess taken.) 20 EXAMINATION (Cont'd.) 21 BY MR. PETERS: 22 Q. Take a look back at Exhibit 39, and</p>	<p style="text-align: right;">Page 133</p> <p>1 So, and those kinds of applications, 2 there's more of a cookie-cutter approach to it. 3 If you build them, you can layer them in for, you 4 know, most retailers. 5 Q. And that would be the retailer 6 promotion program which is the second column, 7 right? The second one? 8 A. Yes. 9 Q. Let's -- 10 A. And then on the brand promotion side, 11 usually, you have marketers who are -- they 12 establish their own criteria for what it is they 13 want to go after. So it requires a lot more 14 effort on the front end to customize queries and 15 go through the analysis and do all of those 16 things. So a bit more complicated. 17 Q. From your perspective at the time, 18 that is, late '99 on through 2000, was that 19 SmartSource Direct did not have the technical 20 capacity to develop brand promotion programs? 21 A. Well, there was probably a technical 22 capacity there. But whether or not it was</p>

34 (Pages 130 to 133)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 134</p> <p>1 sufficient to compete with other services that 2 were out there, I would say the answer is no to 3 that. 4 Q. Do you know whether they had 5 successfully competed up to that time with other 6 companies in that space? 7 A. I think -- I don't know the answer to 8 that specifically. I can't recall. 9 Q. Did you look into it to determine 10 whether or not they had successfully competed 11 against companies like Catalina or -- 12 A. Yeah, I believe that there had been 13 some modest applications done in the past but 14 nothing of any consequence, and certainly not -- 15 we're not in a condition to effectively compete 16 against the, the other businesses that are out 17 there, certainly not Catalina. 18 Q. Is there a market analyst out there 19 that is keeping track of this market? 20 A. Independent market analyst someplace? 21 Q. Right, exactly. Someone who at the 22 time was tracking the market.</p>	<p style="text-align: right;">Page 136</p> <p>1 marketing companies in terms of selling -- 2 selling data, like Wally Marx does for the rest 3 of the promotion business, I think the answer is 4 no, that didn't exist. I don't know if it exists 5 today. 6 Q. The other items on data marketing 7 listed in Exhibit 39, can you recall from your 8 experience whether -- 9 A. Which buckets are you pointing to 10 here? 11 Q. On the data marketing. We spoke 12 about brand promotion and we spoke about retail 13 promotion programs. Do you recall whether 14 SmartSource Direct had technical capacity and 15 skill to do event fulfillment and co-marketing 16 systems? 17 A. I don't recall. Again, everything is 18 on a relative basis. You can always make an 19 argument that you don't need any system to do 20 event fulfillment. You can get a phone call from 21 somebody who says, "I want a sampling project put 22 into these twenty stores." I don't have a</p>
<p style="text-align: right;">Page 135</p> <p>1 MR. KATZ: Objection. 2 A. I'm not sure. 3 Q. Did you ever hear of a woman, Carlene 4 Theissen? 5 A. Sure. 6 Q. What was she doing in this space? 7 A. Carlene, as I recall, wasn't 8 necessarily tracking database marketing programs. 9 I think Carlene Theissen, who was actually 10 involved in some way, shape or form, with 11 Citicorp POS, I think Carlene's role was more of 12 a -- she may have been an employee of the Food 13 Marketing Institute or have run a small business 14 that did a lot of complementary work for the Food 15 Marketing Institute. 16 There was a woman who worked for 17 Carlene, as I recall, named Betsy Tucker who used 18 to work for Citicorp POS. So that would be one 19 of the things that they would probably want to be 20 able to comment on. But if you're suggesting 21 that they were the industry watchdog on database 22 marketing and providing services to the database</p>	<p style="text-align: right;">Page 137</p> <p>1 database marketing system to do that. But to the 2 extent that -- were we actually doing event 3 fulfillment work and co-marketing work? That's 4 very -- very hard to say. 5 Q. I show you a document that was marked 6 in Henry Lellouche's deposition as Exhibit 1. 7 (Handing document to witness.) 8 Q. Would you take a look at that and 9 tell me if you've seen this memorandum or any 10 part of this memorandum before today? 11 A. I don't recall seeing this. 12 Q. Do you know all the players listed on 13 the memorandum? 14 A. I do. 15 Q. Are they you a News America or News 16 America Marketing folks? 17 A. No. 18 Q. Who is who? 19 A. Well, John Nallen and Lon Jacobs are 20 high-level financing, legal people, respectively, 21 working for News America. Paul Carlucci is the 22 CEO of News America Marketing. And David DeVoe,</p>

35 (Pages 134 to 137)

Mixon, Christopher

July 18, 2007

New York, NY

Page 138	Page 140
<p>1 Jr., is another high-placed financial person 2 working for News Corporation. 3 Q. Take a look at the second page of the 4 business overview. 5 A. Um-hum. 6 Q. And I won't read it. I'll just have 7 you read "Business Overview" and the bullet 8 points under "Business Overview," and tell me if 9 there's anything in this section of Exhibit 1 10 that is inconsistent with your memory and 11 experience? 12 A. Well, I think that the answer is -- 13 I'm going to give you a yes-and-no answer here -- 14 I think as I've stated before, they can do these 15 things. But the level to which they can do these 16 things isn't scalable. It's not -- it wasn't 17 sophisticated to the point where we believed we 18 could effectively compete using their platforms 19 in the marketplace at large. And I think, you 20 know, beyond Duane-Read, who was the largest 21 customer that CCMI worked with, they were 22 effective in selling Duane-Read. I think they</p>	<p>1 data-mining engines in order to take this 2 business anywhere. 3 Q. And that was not something that you 4 knew about beforehand, as far as you knew? 5 A. No. 6 Q. Do you know what commitments were 7 made to CCMI about growing its business prior to 8 the acquisition? 9 A. No. 10 Q. You've had no conversations with 11 anyone to learn about what commitments were made 12 to CCMI prior to the acquisition? 13 A. No. 14 Q. Would you take a look again at 15 Exhibit 1. And take a look at the model 16 assumptions on this third page. 17 A. The page marked page -- this page 18 (indicating)? 19 Q. No, the page -- 20 A. The page marked page 2? 21 Q. Yes. It's marked page 2, but it's 22 the third page of the document.</p>
Page 139	Page 141
<p>1 were less effective ultimately in satisfying 2 Duane-Read. 3 And I don't believe there was any 4 other major customer of consequence that was part 5 of the CCMI stable. At least not, you know, of 6 consequence based on what I was used to working 7 with when I was based at Citicorp. 8 Q. Does that round out your answer? 9 A. Yes. 10 Q. The issue of scalability, Mr. Mixson, 11 I take it, then, that as far as you know, News 12 America Marketing acquired CCMI, understanding 13 that its technology was not scalable? 14 A. I didn't say that. 15 Q. Do you know whether that's true or 16 not? 17 A. I don't know whether that's true or 18 not. I know the conclusion that we reached, as 19 we became more intimate after the acquisition of 20 CCMI and its transformation to SmartSource 21 Direct, was that it did not have scalability; 22 that we would have to introduce different</p>	<p>1 Under, "Model assumptions," if you 2 look at the bullet point 5, begins, "News 3 America's model assumes," do you see that? 4 A. I'm not following you. 5 (Counsel indicating.) 6 A. Okay. 7 Q. "News America's model assumes a 8 valuation range of 40.7 million to 58.4 million 9 based on a 15 percent discount rate and an 8X to 10 12X EBITDA multiple." 11 Is that information that was ever 12 discussed with you, that valuation of the 13 company? 14 A. No. 15 Q. Do you have any reason to disbelieve 16 the information? 17 A. Yes. 18 Q. What's your basis to believe that 19 what Mr. DeVoe wrote to senior executives at News 20 Corp. is inaccurate? 21 MR. KATZ: Objection. 22 You can answer.</p>

36 (Pages 138 to 141)

Mixon, Christopher

July 18, 2007

New York, NY

Page 142	Page 144
<p>1 A. I --</p> <p>2 Q. You don't know whether it's -- is</p> <p>3 that your response?</p> <p>4 A. Yeah. I don't know what would lead</p> <p>5 them to -- I don't know what would lead them to</p> <p>6 make these projections. Obviously they were made</p> <p>7 in good faith. But I think they were obviously</p> <p>8 erroneous projections.</p> <p>9 Q. Well, do you have any reason to</p> <p>10 believe that the projections were made having in</p> <p>11 mind that there would be significant investment</p> <p>12 in the company, CCMI, that would allow those</p> <p>13 projections to be realized?</p> <p>14 A. I don't know.</p> <p>15 Q. Do you know whether or not all the</p> <p>16 investments that News America Marketing</p> <p>17 contemplated making in SmartSource Direct were</p> <p>18 made, or whether or not it pulled back on</p> <p>19 investing in the company at some point?</p> <p>20 MR. KATZ: Objection.</p> <p>21 A. I -- I don't know how to answer that.</p> <p>22 I think you -- you make investments that are</p>	<p>1 e-mail chain Bates numbered FR0215, marked</p> <p>2 for identification, as of this date.)</p> <p>3 Q. Just take a look at Exhibit 47,</p> <p>4 Mr. Mixson.</p> <p>5 (Handing document to witness.)</p> <p>6 Q. Do you recall this as one of your</p> <p>7 e-mails back in April of 2000?</p> <p>8 (A pause in the proceedings.)</p> <p>9 A. I'm sorry, what was the question?</p> <p>10 Q. I want you to just, as we say in the</p> <p>11 business, authenticate this as one of your own</p> <p>12 e-mail --</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Is the content familiar to</p> <p>15 you?</p> <p>16 A. Uh -- yeah.</p> <p>17 Q. What are you discussing in this</p> <p>18 e-mail with Bob Fireman, this e-mail exchange?</p> <p>19 A. Well, I think this is a, on the one</p> <p>20 hand, a response to his e-mail below,</p> <p>21 reciprocating his thanks for having me up and my</p> <p>22 thanks for being hosted by the SmartSource Direct</p>
Page 143	Page 145
<p>1 required and that you believe are going to result</p> <p>2 in success. So you make whatever the investments</p> <p>3 necessary to get from one point to the next are.</p> <p>4 You can't determine what you're going to invest</p> <p>5 until you understand what you're investing in.</p> <p>6 Q. I understand that as a general rule.</p> <p>7 I'm wondering whether or not you can think of a</p> <p>8 specific instance where a contemplated investment</p> <p>9 was withdrawn.</p> <p>10 A. No.</p> <p>11 MR. PETERS: I think this is our</p> <p>12 Exhibit 45.</p> <p>13 MR. KATZ: No, I think it's 47.</p> <p>14 MR. PETERS: 47, Gordon?</p> <p>15 THE WITNESS: Am I done with these?</p> <p>16 MR. PETERS: Yes.</p> <p>17 MR. KATZ: Yes.</p> <p>18 (A pause in the proceedings.)</p> <p>19 MR. KATZ: Exhibit 47. Whatever that</p> <p>20 would be.</p> <p>21 MR. PETERS: Yes, sir.</p> <p>22 (Plaintiff Exhibit (Mixon) 47,</p>	<p>1 team up in Braintree.</p> <p>2 And I think that, you know, Henry --</p> <p>3 trying to put this into context, I think one of</p> <p>4 the problems with Bob is that he was, you know,</p> <p>5 his idea generation was somewhat frenetic. We</p> <p>6 need to have more focus. And that at the end of</p> <p>7 the day we were most interested in dealing with</p> <p>8 database marketing enterprises, and you can't do</p> <p>9 that without the data. You have to have access</p> <p>10 to data. You have to be developing relationships</p> <p>11 with retailers and you have to be privy to the</p> <p>12 information stream because, if you don't have it,</p> <p>13 you don't have a product to sell.</p> <p>14 So this was actually a quote that</p> <p>15 used to be used at Citicorp POS, "It's about the</p> <p>16 data. You have to get the data." "It's the data</p> <p>17 stupid." That wasn't meant as a derogatory</p> <p>18 comment, anyway. That was just the mantra that I</p> <p>19 want everybody to be, on the SmartSource Direct</p> <p>20 side of the business, to have as their mantra.</p> <p>21 It's all about getting data, being able to manage</p> <p>22 the data and being able to compartmentalize and</p>

37 (Pages 142 to 145)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 146</p> <p>1 analyze the data and then ultimately sell the</p> <p>2 data for targeted applications.</p> <p>3 Q. The personal issues referenced in the</p> <p>4 second paragraph, do you have in mind what those</p> <p>5 are, or were?</p> <p>6 A. No.</p> <p>7 Q. And you request more resources. Do</p> <p>8 you know what request that refers to?</p> <p>9 A. No.</p> <p>10 (Plaintiff Exhibit (Mixon) 48,</p> <p>11 e-mail document Bates numbered FR1313,</p> <p>12 marked for identification, as of this</p> <p>13 date.)</p> <p>14 Q. Exhibit 48 is an e-mail from you to</p> <p>15 Ann Raider. It's Bates numbered FR1313.</p> <p>16 Do you recall the issues that are</p> <p>17 discussed briefly in this e-mail?</p> <p>18 A. Not really. I'm just -- I'm trying</p> <p>19 to, you know, piece that together after rereading</p> <p>20 it here. But it looks like Ann had, just from</p> <p>21 reading the e-mail, it looks like Ann had</p> <p>22 appealed to me for some type of assistance in</p>	<p style="text-align: right;">Page 148</p> <p>1 A. Never.</p> <p>2 Q. Do the issues discussed in the e-mail</p> <p>3 look familiar to you in any way?</p> <p>4 A. No.</p> <p>5 Q. In the third paragraph where</p> <p>6 Mr. DeVoe writes, "My understanding was that both</p> <p>7 of you play an integral role in the development</p> <p>8 of SmartSource Direct." Is that consistent with</p> <p>9 your understanding?</p> <p>10 A. I can't comment. I really don't have</p> <p>11 any recollection of this -- this document.</p> <p>12 Q. I understand. But where Mr. DeVoe</p> <p>13 writes, "My understanding was that both of you</p> <p>14 play an integral role in the development of</p> <p>15 SmartSource Direct," my question, Mr. Mixson, is,</p> <p>16 is that also, or was that also your</p> <p>17 understanding?</p> <p>18 A. Less so, perhaps. You'd have to</p> <p>19 really, you know, Dave DeVoe's interpret -- why</p> <p>20 he would make that statement, you'd have to ask</p> <p>21 David about. I think that we hoped that Bob and</p> <p>22 Ann would play an integral role in the</p>
<p style="text-align: right;">Page 147</p> <p>1 increasing a bonus payment or delivering a bonus</p> <p>2 payment to her and that she had gone directly to</p> <p>3 Dave DeVoe on, and I was just responding to that.</p> <p>4 Q. Do you remember there being issues</p> <p>5 and concerns expressed to you about bonuses that</p> <p>6 they had received or not received?</p> <p>7 A. Not really.</p> <p>8 Q. This e-mail doesn't refresh any</p> <p>9 particular recollection, I take it?</p> <p>10 A. Well, it refreshes the recollection</p> <p>11 as I'm reading this e-mail and seeing that there</p> <p>12 was a problem with that.</p> <p>13 Q. But you don't have a memory</p> <p>14 independent of the e-mail.</p> <p>15 A. No.</p> <p>16 (Plaintiff Exhibit (Mixon) 49,</p> <p>17 e-mail document Bates numbered FR0032,</p> <p>18 marked for identification, as of this</p> <p>19 date.)</p> <p>20 Q. Exhibit 49 is a one-page e-mail dated</p> <p>21 September 12th, 2000. You're shown as a copy.</p> <p>22 Do you remember seeing it?</p>	<p style="text-align: right;">Page 149</p> <p>1 development of SmartSource Direct. I think our</p> <p>2 experience was, they were increasingly playing</p> <p>3 less and less of an integral role in the</p> <p>4 development of the -- of the business.</p> <p>5 So this is in September of 2000.</p> <p>6 It's hard for me to put this in terms of that</p> <p>7 timeline I was talking about earlier where my</p> <p>8 reliance on them was weakening as we moved</p> <p>9 through time. So I'm not sure where we're at.</p> <p>10 Q. Take a look at what was marked</p> <p>11 yesterday as Exhibit 43. And I'll ask you first</p> <p>12 if you have seen it before.</p> <p>13 (Handing document to witness.)</p> <p>14 A. I can't recall.</p> <p>15 Q. The bullet points listed under "FY</p> <p>16 2002 Year in Review," remind me of your</p> <p>17 chronology. Were you gone by then, March of</p> <p>18 2002?</p> <p>19 A. I'm not sure. It was right around</p> <p>20 the time -- right around the cusp of when I would</p> <p>21 be leaving, I believe.</p> <p>22 Q. The top of this chart is Bill</p>

38 (Pages 146 to 149)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 150</p> <p>1 Christie.</p> <p>2 A. Well, that would suggest I wasn't</p> <p>3 there then.</p> <p>4 Q. I think that's probably -- relatively</p> <p>5 new.</p> <p>6 A. I think I anniversary my return in</p> <p>7 April. But it may have been earlier by a few</p> <p>8 weeks.</p> <p>9 Q. In any event, if we look at the</p> <p>10 bullet points, supervisory -- I'm sorry, bullet</p> <p>11 point 1, "Supervisory reorganization relieves</p> <p>12 Fireman from operations and Raider of retail</p> <p>13 sales responsibilities."</p> <p>14 Do you recall that happening?</p> <p>15 A. I -- vaguely.</p> <p>16 Q. Do you remember why it happened?</p> <p>17 A. Yeah. I believe that there were</p> <p>18 serious issues with their ability to manage, and</p> <p>19 because their -- their personal conduct in the</p> <p>20 business was inconsistent with the way, you know,</p> <p>21 we conduct ourselves in business. It's very</p> <p>22 difficult to put somebody running, managing other</p>	<p style="text-align: right;">Page 152</p> <p>1 management of both Ann and Bob. I think Bill</p> <p>2 Adams is a case in point. As I recall, Bill</p> <p>3 Adams was enthusiastic about the opportunities of</p> <p>4 relocating from Braintree to Wilton and getting</p> <p>5 involved in projects that would exclude him from</p> <p>6 being under their management.</p> <p>7 Q. Did you leave room for the</p> <p>8 possibility that Bill Adams was more interested</p> <p>9 in an \$80,000 raise?</p> <p>10 A. Certainly, that would play a role</p> <p>11 there, no doubt. But I think that there were</p> <p>12 other elements of it as well. You might know</p> <p>13 better than I do. Maybe you've deposed Bill</p> <p>14 Adams. I don't know. That's just my personal</p> <p>15 recollection. That's all I can tell you.</p> <p>16 Q. I understand.</p> <p>17 A. In Ann's case, I think, you know, I</p> <p>18 think, you know, we had a minimum requirement of,</p> <p>19 and we still do, that salespeople will make a</p> <p>20 minimum of ten preplanned sales calls a week.</p> <p>21 Every sales manager at the group</p> <p>22 sales manager level and below, and this would</p>
<p style="text-align: right;">Page 151</p> <p>1 people when they are not displaying the effective</p> <p>2 behavior you are looking for themselves. So I</p> <p>3 think that had a lot to do with it.</p> <p>4 Q. Do you have a memory of what</p> <p>5 misbehavior you're thinking of in response to my</p> <p>6 question?</p> <p>7 MR. KATZ: Objection.</p> <p>8 A. Yes.</p> <p>9 Q. Could you articulate it?</p> <p>10 A. Just simple -- simple things that</p> <p>11 would be simple to correct that aren't. I mean,</p> <p>12 Bob -- I think Bob had a history of coming in to</p> <p>13 work late. You know, he would come into a formal</p> <p>14 business environment consistently dressed very</p> <p>15 casually. And I think he just -- he just went</p> <p>16 out of his way to, you know, be exclusive instead</p> <p>17 of inclusive. You know, one of our operating</p> <p>18 principles here at News America Marketing is</p> <p>19 inclusive management.</p> <p>20 So I think that certain employees, as</p> <p>21 I recall, had issues. Former CCMI employees were</p> <p>22 anxious to try and get out from underneath the</p>	<p style="text-align: right;">Page 153</p> <p>1 really be a group sales manager type job based on</p> <p>2 the number of people that are reporting in, are</p> <p>3 expected to adhere by that standard and everybody</p> <p>4 they work for are expected to be managed to reach</p> <p>5 that standard.</p> <p>6 I think there was very little</p> <p>7 compliance with those expectations. So you're</p> <p>8 not going to be put into a sales management</p> <p>9 situation for very long at News America if you're</p> <p>10 not successful in growing sales and if you</p> <p>11 personally, through your own conduct, are</p> <p>12 demonstrating that you don't adhere to the</p> <p>13 company's sales management discipline and are</p> <p>14 able to lead people to achieve those same kinds</p> <p>15 of goals.</p> <p>16 I think those are the kinds of</p> <p>17 reasons that Bob and Ann were removed from</p> <p>18 management responsibility and I think it reflects</p> <p>19 a real interest on the part of the organization</p> <p>20 to make this enterprise successful.</p> <p>21 Q. Did you review any documents in</p> <p>22 preparing for today's deposition?</p>

39 (Pages 150 to 153)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 154</p> <p>1 A. There were some documents that I 2 reviewed yesterday. 3 Q. Can you tell me what they are? 4 A. No. This wasn't one of them. 5 Q. Do you remember, were they e-mail, 6 were they charts, can you describe them for me? 7 A. They were a few -- e-mails mostly I 8 looked at. One of the documents we looked at 9 today, I think I recall seeing yesterday. We 10 moved through them very quickly. I didn't study 11 them. 12 Q. Do you remember the substance of any 13 of the e-mail you reviewed? 14 A. No, not really. 15 Q. The criticisms that you just 16 articulated, these are criticisms that would be 17 reflected in their, Ann and Bob's reviews? 18 A. Yeah. I think that, you know, the -- 19 we go through an annual appraisal process here, 20 and I think News America in its evaluations of 21 employees is generous to a fault. I think the 22 normal -- the normal way, you know, we try and</p>	<p style="text-align: right;">Page 156</p> <p>1 appraisals. 2 Q. And bonuses can be affected by 3 appraisals? 4 A. Yes. 5 Q. Bonuses are discretionary? 6 A. Bonuses at a certain level in the 7 organization are discretionary, yes. 8 Q. Were Ann Raider and Bob Fireman's 9 bonuses discretionary? 10 A. I don't recall, other than what I've 11 just seen in the correspondence that you've 12 handed me, which would suggest that they are. 13 Q. Do you know whether or not they were 14 penalized in bonuses for any of the conduct 15 you've described for us in response to one of my 16 questions a bit ago? 17 MR. KATZ: Objection. 18 A. I don't know that. 19 MR. PETERS: This next document is 20 one that's already been marked in the case 21 as Exhibit 106. It's FR03041 and 42. 22 MR. KATZ: So you're not going to</p>
<p style="text-align: right;">Page 155</p> <p>1 engage employees -- you try to personalize the 2 business with employees, you know, rather than 3 crucify employees for shortcomings and exaggerate 4 those, which some companies do. I've worked for 5 companies that do that. 6 We have a tendency to accentuate the 7 positives here. We touch on things that we have 8 concern about, and usually we see, that's usually 9 sufficient to get people to start moving in a 10 progressive, positive way. 11 With employees that -- some employees 12 you don't make any -- so the issues that were, 13 you know, treated relatively with kid gloves 14 early on become more pronounced as you move 15 through time and the appraisals have a tendency 16 to get very, very much more direct. And I think 17 that's probably what, you know, if you looked at 18 that trend, you'd probably see it, although I 19 can't tell you for certain that's what you're 20 going to find, but I think if you look at their 21 performance appraisals over time, you'll probably 22 find that type of sentiment expressed in those</p>	<p style="text-align: right;">Page 157</p> <p>1 mark it again. 2 MR. PETERS: Right. 3 MR. KATZ: That would have been 4 Defendant's Exhibit 106. 5 Q. Would you take a look at this exhibit 6 and tell me whether you recall seeing it before? 7 (Handing document to witness.) 8 A. Sorry? 9 Q. Tell me if you remember the exhibit, 10 please. 11 A. I don't. 12 Q. Could you read it and tell me if, 13 generally, you recall the substance of the issues 14 that Bob Fireman raises in his memo to you on 15 October 17th. 16 (A pause in the proceedings.) 17 A. Okay. What's your question? 18 Q. Do you remember receiving this? 19 A. No. 20 Q. Do you remember talking to Bob 21 Fireman about the issues that he discusses in 22 this memorandum?</p>

40 (Pages 154 to 157)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 158</p> <p>1 A. I never spoke to Bob Fireman where, 2 you know, he wasn't always complaining about 3 something. So I really don't recall the specific 4 issues. Everything from Bob was a complaint. 5 What you get when you read this memo 6 is the fact that, you know, there -- I look at 7 this and, you know, this is -- this is an 8 individual who, you look at this as -- as his -- 9 his business. He doesn't look at this as a News 10 America Marketing business where we're making 11 decisions in the best interests of the business. 12 My tendency on this would have been 13 to refer this to the -- this kind of stuff to the 14 finance department and -- that was currently 15 managed by Dave DeVoe. Because Dave was part of 16 the -- he was the guy leading the acquisition 17 effort, now running our finance department. He 18 was intimate with the details of the contract 19 with Bob Fireman and Ann Raider. 20 Q. Well, let's look at the bullet 21 points. 22 A. Okay.</p>	<p style="text-align: right;">Page 160</p> <p>1 corporation. 2 Q. They weren't allowed to direct the 3 business activities of SmartSource Direct. You 4 would agree with that. 5 A. I think -- no, I -- well, if your 6 question is, were they empowered to contribute to 7 that enterprise? I would say the answer is yes. 8 If the question is, were Bob and Ann given 9 indiscriminate authority to do as they pleased 10 with a company that had just been purchased by 11 News America Marketing, the answer so that is no. 12 Q. Was Bob Fireman allowed to be the 13 general manager of SmartSource Direct? 14 A. I think for a limited period of time, 15 Bob served as the general manager. I think as 16 time progressed, and the company continued to 17 develop, you know, bigger and bigger doubts about 18 his leadership skills, I think that Bob had that 19 general manager, what you'd normally associate 20 with general manager responsibilities 21 successively withdrawn. 22 Q. Do you remember when that happened?</p>
<p style="text-align: right;">Page 159</p> <p>1 Q. The first bullet point you can't 2 comment on because you don't know what promises 3 were made prior to the acquisition, right? 4 A. Presumably those promises would be 5 codified in an agreement and I've never seen the 6 agreement. 7 Q. You don't know what commitments were 8 made. 9 A. I do not. 10 Q. The second bullet point, "NAM never 11 empowered us to run the business." 12 You disagree with that? 13 A. Well, again, that is a relative term. 14 Everybody is empowered to some extent, dependent 15 upon the degree to which they are perceived as 16 contributing to the success of the enterprise. 17 So I wouldn't agree with that. 18 Q. Ann and Bob were not allowed to be 19 autonomous in this -- 20 A. No. 21 Q. -- company? 22 A. No one is autonomous in a</p>	<p style="text-align: right;">Page 161</p> <p>1 A. No, it was an evolutionary process. 2 Q. Was Bob the general manager when 3 Henry Lellouche came into the IGroup? 4 A. I believe he was. 5 Q. Do you know that Henry Lellouche had 6 the title of general manager? 7 A. Yes. As I indicated about before, 8 you know, the titles -- the titles -- don't get 9 confused on titles. We have people that we have 10 been giving vice presidents' titles because we 11 believe it empowers them with customers more than 12 it reflects specific responsibilities that are 13 unique to vice-presidents. 14 So, you know, I -- that's the best 15 answer I can give you on that. 16 Q. Titles aren't necessarily meaningful, 17 or at least that's your testimony? 18 A. I think titles are generally 19 meaningful, but I think there are instances where 20 titles are not necessarily completely 21 commensurate with job responsibilities. 22 Q. Let's look at the next bullet point.</p>

41 (Pages 158 to 161)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 162</p> <p>1 "NAM divided and assimilated CCMi's technology, 2 personnel, resources and knowhow." 3 Do you recall talking to Bob about 4 that criticism, ever? 5 A. Yeah, I believe I had conversations 6 about it. What Bob would define as dividing and 7 assimilating, I would take a look at and say what 8 we basically have done is improve your bottom 9 line by reducing cost overheads because that's 10 now being assumed by existing infrastructure at 11 News America Marketing. 12 So, you know, this is a similar 13 complaint to the Canadian example I gave you 14 earlier. We had people in Canada telling us that 15 we would destroy their business if we had 16 eliminated their finance and marketing 17 department. Instead, we've taken it from a \$2 18 million business to a \$15 million profit 19 business. They don't have the overhead 20 associated with those areas anymore. We already 21 had the competency and the capability within the 22 News America Marketing organization. I don't</p>	<p style="text-align: right;">Page 164</p> <p>1 efforts increasingly made them less important in 2 that process. 3 Q. Well, this memo on its face is from 4 October 17, 2000. 5 A. Um-hum. 6 Q. By October 17 of 2000, had the 7 decision been made internally to marginalize Ann 8 Raider and Bob Fireman's role in key decisions? 9 MR. KATZ: Objection. 10 A. I can't answer that. I don't know. 11 Q. The next bullet point where it says, 12 "We have had no involvement in the approval of 13 budgets or projections and to this date, have 14 never seen financials sufficient to calculate our 15 earn-out." 16 Do you know whether that's true or 17 not true? 18 A. I don't know if that's true. And I 19 doubt that it is. 20 Q. Should they have been involved in the 21 approval of budgets and projections? 22 MR. KATZ: Objection.</p>
<p style="text-align: right;">Page 163</p> <p>1 need two finance departments. I don't need two 2 collections departments. 3 Bob would look at that as our having 4 assimilated their personnel. That's, you know, 5 it's -- it depends upon your perspective here. 6 As someone charged with taking these assets that 7 were acquired by News America Marketing and 8 developing a sustainable and profitable business 9 from them, I look at them from the exact opposite 10 position from Bob Fireman. 11 Q. The next bullet point, "NAM seldom 12 included our input into any key decisions 13 relative to the business." 14 Do you dispute that? 15 A. Absolutely. 16 Q. You think that they were included, 17 Ann and Bob, in key decisions relative to the 18 business? 19 A. I think they were included in key 20 decisions early in my tenure at the IGroup. I 21 think that their failure to bring value to those 22 conversations and our business development</p>	<p style="text-align: right;">Page 165</p> <p>1 A. No. They don't own the business. 2 News America Marketing owns the business. The 3 risk at this juncture in terms of, you know, 4 making that investment pay out is News America 5 Marketing's. And therefore, it's our 6 responsibility to determine budgets and things 7 along those lines. 8 Q. Well, they -- 9 A. Yes, to the extent to which you bring 10 value to an enterprise dictates the degree to 11 which you're going to be included in the 12 enterprise. 13 Q. It's not your testimony that the only 14 people at risk were News America Marketing. You 15 understand, don't you, at least in retrospect, 16 that a significant part of the purchase price of 17 this business was in the form of an earn-out. 18 You know that, don't you? 19 MR. KATZ: Objection. 20 A. I do now, yes. 21 Q. So do you think it's appropriate not 22 to -- I'm not saying to give them complete</p>

42 (Pages 162 to 165)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 166</p> <p>1 autonomy, but not to involve them in the approval 2 of budgets and projections, do you think that's 3 appropriate? 4 MR. KATZ: Objection. 5 A. I think there's a responsibility on 6 the part of Bob and Ann to bring value to the 7 enterprise to the point where you want to include 8 them in those discussions. 9 If they were not, and I don't know 10 that they were not, but if they were not, I think 11 what you need to question is, why were they not. 12 And they wouldn't be because they weren't 13 bringing value to the process. 14 Q. The next bullet point discusses, "NAM 15 removed all control and ability for us to drive 16 the business and make the agreed-upon plan or 17 earn-out." 18 I take it you disagree with that? 19 A. Yes. 20 Q. Do you think they still had control 21 over the business? 22 A. It doesn't say that. It says</p>	<p style="text-align: right;">Page 168</p> <p>1 for a company. It doesn't do anything to drive 2 your ball in or to improve your bottom line. 3 Just the opposite usually is the impact. 4 So generally speaking, we don't 5 participate in those kinds of functions and I 6 think there were exceptions actually made for the 7 SmartSource Direct team who did participate in 8 some industry trade shows. But personally having 9 participated for numerous companies in many trade 10 shows, I can't tell you of one instance where 11 I've ever closed a piece of business as a 12 consequence to participation in a trade show. So 13 I happen to subscribe to that philosophy. 14 Q. Well, isn't the idea not necessarily 15 to close a piece of business directly correlated 16 to meeting somebody at a trade show, isn't part 17 of the idea to have presence, to let the industry 18 know that you're out there and that is what you 19 are and this is what you have available? 20 A. The industry will know you're out 21 there much better if you have dedicated 22 salespeople being led by competent sales</p>
<p style="text-align: right;">Page 167</p> <p>1 "removed all control." 2 Q. Do you still they had control over 3 the business so that they could drive the 4 business and get the earn-out? 5 A. I think they had -- they had a share 6 of control and a share of ability to, you know, 7 to cooperate and contribute. 8 Q. The next bullet point states, "We had 9 to fight to keep our presence at the industry 10 trade shows. All advertising and public 11 relations was stopped." 12 Is that consistent with your memory? 13 A. News America Marketing has grown to 14 be the industry leader in FSI and arguably the 15 industry leader in in-store based on a totally 16 different philosophy in driving the business, 17 which generally precludes that any of our 18 businesses participate in trade shows. And that 19 we don't engage in a lot of advertising and 20 public relations. 21 I think a lot of that -- we think a 22 lot of that stuff is basically feel-good stuff</p>	<p style="text-align: right;">Page 169</p> <p>1 management teams where you're making those 2 minimum number of ten sales calls a week and 3 having personal one-to-ones with people where you 4 have private time to talk about your business. 5 That's our philosophy. Not to be out 6 wining and dining and whooping it up in some 7 convention town over a trade show. And that's 8 usually what goes on. I've been to many of them 9 of okay? I've probably been to a few more than 10 the other people in this room today. And that's 11 not what we do. That's not how we go to market. 12 You can't argue with how successful News America 13 Marketing is, based on how we go to market. So I 14 would refute this completely. 15 Q. So you go to market in part by having 16 a large sales force. 17 A. We go to market by having -- 18 Q. Just answer that question first. 19 A. Yes. We have a large and robust 20 sales force. 21 Q. That's one of the ways that you are 22 visible to your customer base, is that you have a</p>

43 (Pages 166 to 169)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 170</p> <p>1 large sales force that developed personal 2 relationships with your clients. 3 A. I think we have a large sales force 4 and we have a -- we have a relatively assertive 5 and energetic sales force that, you know, minimum 6 ten sales calls a week across ten salespeople is 7 a hundred sales calls a week, okay? Over ten 8 weeks, you've made a thousand sales calls. Now, 9 you can develop a lot of business and get a lot 10 of exposure in ten weeks engaging in that 11 approach, where you're going to be one hell of a 12 lot more effective using that approach to the 13 business than you are contributing to somebody 14 else's profit center by spending money to be in 15 trade shows. 16 Q. So one of the ways to increase 17 SmartSource Direct's visibility within the 18 industry is, rather than attend trade shows, have 19 your sales reps talk about, sell, promote 20 SmartSource Direct, right? 21 A. Part of the way, I would say that's 22 correct, yes.</p>	<p style="text-align: right;">Page 172</p> <p>1 Q. Might be fair and might not be fair? 2 A. Might be fair and might not be fair. 3 Q. The next bullet point, "Any action by 4 us to object was considered action against the 5 company and we were isolated and even reported to 6 the chairman for reprimanding." 7 Do you recall what he's discussing in 8 that bullet point? 9 A. No. 10 Q. Do you remember Mr. Carlucci ever 11 reprimanding Bob Fireman? 12 A. No. 13 Q. Do you remember raising Bob Fireman's 14 complaints to anyone at the executive committee 15 level? 16 MR. KATZ: Objection. 17 A. Bob -- Bob created a -- I think 18 unfortunately, I think this memo is symptomatic 19 of the constructive input that you would 20 basically get from Bob. It was a very, "Me, me" 21 oriented conversation. 22 There was unfortunately limited focus</p>
<p style="text-align: right;">Page 171</p> <p>1 Q. The next bullet point says, "NAM 2 created its own financial plan for revenue and 3 resources. This plan will not allow us to make 4 our bonuses or projected earn-out." 5 Do you understand what Mr. Fireman is 6 driving at in that bullet point? 7 A. I can't comment on it. I have no 8 knowledge about that. I don't know if it's 9 directionally accurate or inaccurate. I have no 10 idea. 11 Q. Well, let's just assume for the 12 purposes of my question that NAM did create its 13 own financial plan for revenue and resources and 14 that that plan could not allow either Ann Raider 15 or Bob Fireman to make their bonus and projected 16 earn-out. Is that something that you -- -- 17 MR. KATZ: Objection. 18 Q. -- would think is fair? 19 MR. KATZ: Objection. 20 A. I can't comment on it. I didn't put 21 together the deal so I don't know the elements of 22 the deal.</p>	<p style="text-align: right;">Page 173</p> <p>1 on what was going to make the business successful 2 and so in instances, there may be instances 3 where, you know, when we're talking about 4 personnel, whether it's -- whatever meeting, 5 which we do periodically have conversations about 6 our human resources, Bob Fireman may be 7 discussed. But, you know, as far as his being 8 reprimanded by the chairman or anything like 9 that, I have no recollection of it. 10 Q. Do you have any recollection of 11 discussing it or are you -- 12 A. Not specifically. 13 Q. You're theorizing. 14 A. Yes. We have senior -- any -- any 15 senior-level manager is going to spend an 16 inordinate amount of time, as you move up the 17 food chain, your words, not mine, spending more 18 and more time on human resources. So to the 19 extent that, you know, Bob represented, you know, 20 one of our human resources, yes, he would be 21 discussed. 22 Q. The last bullet point, "Company as</p>

44 (Pages 170 to 173)

Mixon, Christopher

July 18, 2007

New York, NY

Page 174

1 defined in our agreement is now the SmartSource
2 IGroup. Our name was changed. Our new products
3 never built."

4 I'm going to stop right there and ask
5 about new products. Do you know what he's
6 referring to here when he says "new products have
7 not been built as of October 2000"?

8 A. No.

9 Q. "Our technology was removed." Do you
10 know what he means?

11 A. No.

12 Q. "Key personnel of CCMI have been
13 relocated and terminated." That's Bill Adam and
14 anyone else, right?

15 A. Well --

16 MR. KATZ: Objection.

17 A. -- I think some of the people that
18 they recruited, that Ann Raider recruited, you
19 know, some of the people that they recruited that
20 worked for Ann Raider were terminated. Some of
21 them left of their own volition. So, yeah, I
22 mean, if somebody doesn't perform well here, they

Page 175

1 are not going to stay on board here. We
2 terminate them.

3 Q. Do you recall there being a problem
4 with filling positions at SmartSource Direct?

5 A. Not any more of a problem that there
6 is filling positions anyplace we look to fill
7 positions.

8 Q. Was there a hiring freeze at some
9 point?

10 A. Periodically there have been hiring
11 freezes as we moved through time.

12 Q. Was there a hiring freeze when you
13 were with the IGroup?

14 A. I can't recall.

15 Q. Do you remember a hiring freeze
16 impacting staffing at SmartSource Direct?

17 A. Well, this memo was dated October.
18 You know, if I started with the IGroup in early
19 2000, let's say it's January, that's ten months.
20 You know, we staffed, we put a lot of people in
21 place in the IGroup in that ten months. So if
22 there was a hiring freeze, I'm not sure that it

Page 176

1 affected the IGroup. There may have been a
2 hiring freeze at News America Marketing, in our
3 core business areas. But I don't have any
4 recollection of a hiring freeze impacting the
5 IGroup.

6 Q. You don't remember there being any
7 issue with filling positions at SmartSource
8 Direct?

9 A. Well, there's always issues filling
10 positions. It's --

11 Q. I'm looking -- I'm looking for any
12 specific recollection that you have that it was a
13 problem articulated to you, elevated to you, that
14 key positions weren't filled.

15 A. I'm always having, you know, people
16 involved in the business lamenting over key
17 positions that are open for even a modest period
18 of time. So the possibility exists that the
19 answer is yes. But that's, you know, that's my
20 cross to bear. I hear that from managers every
21 single day when they have positions open that
22 haven't been filled.

Page 177

1 Q. He discusses in the text paragraph,
2 "As a result of NAM's actions, News America
3 Marketing and us are a year behind in the
4 development of the required staff, technology and
5 resources to grow this to a hundred million-plus
6 business."

7 Do you dispute that? And if so, tell
8 me why.

9 A. I think it's nonsense. You know,
10 number one, where did he get the hundred million
11 dollars from? I think that's a nice round
12 arbitrary number he pulls out of nowhere here.

13 And I think we dedicated inordinate
14 efforts to try and make this business successful
15 as evidenced by the fact that we are successful
16 today.

17 Q. The hundred million dollar number is
18 ridiculous?

19 A. I think it's ridiculous in the sense
20 that looking at October of 2000, we've been in
21 this -- even over at the IGroup for a matter of a
22 few months. I don't even know what were CCMI's

45 (Pages 174 to 177)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 178</p> <p>1 sales when we bought them. Can you tell me that?</p> <p>2 Q. Yes, I can. Take a look at Exhibit 1</p> <p>3 and it will tell you.</p> <p>4 A. Exhibit --</p> <p>5 MR. KATZ: I don't think we have it</p> <p>6 anymore.</p> <p>7 (A pause in the proceedings.)</p> <p>8 A. So, he wants us to take his business</p> <p>9 from a \$4 million business in 1998 to a hundred</p> <p>10 million dollar business by October of 2000?</p> <p>11 Q. Is that how you read this memorandum?</p> <p>12 A. Yeah. How do you read it?</p> <p>13 Q. To grow the business to a hundred</p> <p>14 million at some point. Do you think that was a</p> <p>15 reasonable goal?</p> <p>16 A. I think two hundred million dollars</p> <p>17 is a goal. I think three hundred million dollars</p> <p>18 is a goal. Reasonableness is in the eye of the</p> <p>19 beholder. At some point in time, maybe in thirty</p> <p>20 years, maybe in forty years, the entire industry</p> <p>21 could have transformed itself into a highly</p> <p>22 actuated database marketing-driven business. Who</p>	<p style="text-align: right;">Page 180</p> <p>1 A. Okay.</p> <p>2 Q. You don't have any reason to think</p> <p>3 that was an unachievable goal, do you?</p> <p>4 A. I think a hundred million dollars is</p> <p>5 an admirable goal. I think for Bob to basically</p> <p>6 be saying, less than two years after they have</p> <p>7 achieved a total sales of \$4 million, I think</p> <p>8 that, you know, anybody who reads this is going</p> <p>9 to say, "Yeah, there's a fair amount of hyperbole</p> <p>10 in this thing. I think there's an underlying</p> <p>11 sentiment of exaggeration throughout this entire</p> <p>12 memo.</p> <p>13 Now, what is he trying to accomplish?</p> <p>14 He's trying to get me excited and influence me to</p> <p>15 take some kind of action on his behalf. But it's</p> <p>16 exaggerated from the first bullet point all the</p> <p>17 way through. So -- that's how I -- you're asking</p> <p>18 me how I interpret the memo, that's --</p> <p>19 Q. No, I'm asking you not to interpret</p> <p>20 the memo and it's at times like these where we</p> <p>21 regretfully reserve motions to strike. What I'd</p> <p>22 like --</p>
<p style="text-align: right;">Page 179</p> <p>1 knows?</p> <p>2 But jumping from a base of \$4 million</p> <p>3 in 1998 to making a claim of growing the business</p> <p>4 into a \$100 million business in October of 2000,</p> <p>5 yeah, I think you could say that is a bit of a</p> <p>6 leap, give the fact that you just showed me</p> <p>7 documents that I'd never seen before from News</p> <p>8 Corp. where they were projecting at best they</p> <p>9 were looking at a \$40 million business.</p> <p>10 These are highly competent, you know,</p> <p>11 financial people at senior levels of major</p> <p>12 corporations. So, yeah, I think there's a -- I</p> <p>13 think it would not be a stretch to say that</p> <p>14 there's a high degree of hyperbole, not only in</p> <p>15 that sentence, but in general, most of the things</p> <p>16 that are being communicated in this memo. That's</p> <p>17 my interpretation of this memo.</p> <p>18 Q. I'm not going to get it for you now</p> <p>19 but I'll tell you, and Mr. Katz can get it for</p> <p>20 you, that in one of Mr. Fireman's evaluations, it</p> <p>21 says that his goal should be to grow the business</p> <p>22 to a hundred million dollars.</p>	<p style="text-align: right;">Page 181</p> <p>1 MR. KATZ: Why don't we have the next</p> <p>2 question.</p> <p>3 Q. What I'd like to do is to talk about</p> <p>4 what you agree and disagree with.</p> <p>5 A. Okay.</p> <p>6 Q. And I think that we are getting</p> <p>7 somewhere on that regard. The sentence that</p> <p>8 begins, "Our competitors, such as Catalina,</p> <p>9 Valassis and others, have made significant</p> <p>10 investments in acquisitions in this time frame</p> <p>11 and have made a full effort to expand into the</p> <p>12 areas of royalty marketing."</p> <p>13 Is that something you agree with?</p> <p>14 A. I can't comment on it. I don't know</p> <p>15 what investment Catalina made. Valassis made an</p> <p>16 acquisition of RMS, yeah, that would be a</p> <p>17 significant investment. As far as what, you</p> <p>18 know, CRM technology investments they made, I</p> <p>19 don't know. As far as what database marketing</p> <p>20 investments they made beyond that, I don't know.</p> <p>21 As far as Internet in-store delivery systems,</p> <p>22 Valassis, similar to News America, invested in an</p>

46 (Pages 178 to 181)

Mixon, Christopher

July 18, 2007

New York, NY

Page 182	Page 184
<p>1 Internet business that failed. Ours succeeded. 2 Catalina invested in an Internet business that 3 failed and ours succeeded. 4 Q. Yours succeeded the second time 5 around? 6 A. Ours succeeded the second time 7 around. 8 Q. You're talking about Planet U? 9 A. I'm talking about SmartSource.com. 10 We never owned -- 11 Q. It was an investment. 12 A. We had an investment in Planet U 13 independent of SmartSource.com. 14 Q. And SmartSource.com was part of the 15 IGroup? 16 A. Yes. 17 Q. And that was successful? 18 A. Yes, it's still successful today. 19 It's one of the largest on-line promotion 20 enterprises on the web today. 21 Q. It was successful back in October of 22 2000?</p>	<p>1 way? 2 A. Not really. 3 Q. Nothing about this is resonating? 4 A. No. 5 (Plaintiff Exhibit (Mixon) 51, 6 e-mail with attachments, Bates numbered 7 FR0559 through 562, marked for 8 identification, as of this date.) 9 Q. Would you take a couple of minutes 10 and look at Exhibit 51 and I'll have a few 11 questions. 12 MR. PETERS: Go off the record 13 briefly. 14 (Discussion off the record.) 15 (Recess taken.) 16 EXAMINATION (Cont'd.) 17 BY MR. PETERS: 18 Q. You have Exhibit 51. Have you had a 19 chance to review it? 20 A. Yeah, this was one of the documents 21 that I reviewed yesterday. 22 Q. Okay. Is it an e-mail you received</p>
Page 183	Page 185
<p>1 A. No, it was not in the black in 2 October of 2000. It was a developing business. 3 Q. Mr. Fireman says in the final 4 paragraph, "When we spoke the other day, you 5 asked me to lay out the issues." 6 Do you remember asking Mr. Fireman to 7 lay out his concerns, his issues? 8 A. No. 9 Q. Do you remember the conversation that 10 this memorandum references at all? 11 A. No. 12 (Plaintiff Exhibit (Mixon) 50, 13 e-mail document Bates numbered FR1246, 14 marked for identification, as of this 15 date.) 16 Q. Mr. Mixson, Exhibit 550 is a one-page 17 e-mail. You're copied on it. It's FR1246. 18 Tell me please if you remember at any 19 point reading this e-mail. 20 (Handing document to witness.) 21 A. I have no recollection. 22 Q. Do the contents seem familiar in any</p>	<p>1 and an attachment you received from Ann Raider? 2 A. Apparently so, yeah. 3 Q. And in the e-mail, she talks about 4 hurdles in selling and implementing database 5 management programs as of January 2001. 6 Did you discuss this e-mail with Ann? 7 A. I don't recall. 8 Q. Did you discuss it with anyone else? 9 A. I have no recollection of doing 10 anything with it. 11 Q. Did you look at the attachment and 12 try to understand the issues she'd articulated? 13 A. Yeah, I glanced through it. I didn't 14 read them all in detail, either. But -- 15 Q. I'm more interested in what you did 16 at the time. You have -- 17 A. I have no idea what we did at the 18 time. 19 Q. Let me just get a question out. Ann 20 Raider then was an EVP of sales, right? 21 A. Uh -- I'm not even sure. Was that 22 her title?</p>

47 (Pages 182 to 185)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 186</p> <p>1 Q. You don't remember?</p> <p>2 A. No.</p> <p>3 Q. Okay. In any event, somebody</p> <p>4 involved in the sales cycle for SmartSource</p> <p>5 Direct, right?</p> <p>6 A. Yes.</p> <p>7 Q. An important person in SmartSource</p> <p>8 Direct in terms of sales?</p> <p>9 A. Yes.</p> <p>10 Q. She articulated a number of very</p> <p>11 specific issues with identified customers in this</p> <p>12 e-mail to you, didn't she?</p> <p>13 A. Yes.</p> <p>14 Q. Did you undertake any investigation</p> <p>15 to try to determine whether or not the issues</p> <p>16 that she had raised were either correct and, if</p> <p>17 correct, correctable?</p> <p>18 A. Presumably we took action on it, if</p> <p>19 action was to be taken on it. I have no</p> <p>20 recollection.</p> <p>21 Q. On any given issue, you don't</p> <p>22 remember what happened?</p>	<p style="text-align: right;">Page 188</p> <p>1 and a one-year delay in the release of the Aspen</p> <p>2 product.</p> <p>3 A. I see that.</p> <p>4 Q. Do you disagree with that assessment,</p> <p>5 either completely or in part?</p> <p>6 MR. KATZ: Objection.</p> <p>7 A. I would disagree with it. I, you</p> <p>8 know, I think from my perspective, if I was</p> <p>9 trying to identify people who weren't qualified</p> <p>10 to be in the positions that they were in, based</p> <p>11 on what I know now, I would say that those two</p> <p>12 people would predominantly be Bob Fireman and Ann</p> <p>13 Raider. So to the extent that I, you know, I</p> <p>14 agree with it to that extent, because I think</p> <p>15 that Ann Raider ultimately was unqualified to be</p> <p>16 leading a sales team.</p> <p>17 Q. Did you come to that conclusion while</p> <p>18 you were with the IGroup?</p> <p>19 A. I am coming to the conclusion right</p> <p>20 now in retrospect having had the time that I</p> <p>21 spent with Ann. And I think by January of '01,</p> <p>22 yeah, I had probably gotten close to believing</p>
<p style="text-align: right;">Page 187</p> <p>1 A. Normally in this situation, I would</p> <p>2 give this to Henry Lellouche to follow up on.</p> <p>3 These are specific, isolated operational issues.</p> <p>4 I rarely would get involved at this level.</p> <p>5 Oftentimes, you know, my experience with Ann and</p> <p>6 Bob is, when they didn't like the answers that</p> <p>7 they were getting from the people they reported</p> <p>8 to, they would try and elevate it to me and I</p> <p>9 would give it back down to the people that they</p> <p>10 reported to.</p> <p>11 I'd take a look at it, I'd have</p> <p>12 conversations with my people, I'd understand to</p> <p>13 the best of my ability whether my involvement was</p> <p>14 required, and if it was, I got involved, and if</p> <p>15 it wasn't, I didn't.</p> <p>16 Q. And you don't recall this being</p> <p>17 something that occupied your time to try to parse</p> <p>18 out and correct?</p> <p>19 A. I have no recollection.</p> <p>20 Q. See the second sentence of</p> <p>21 Exhibit 51, Ms. Raider writes, "The issues are</p> <p>22 the result of limited and qualified staff at NAM</p>	<p style="text-align: right;">Page 189</p> <p>1 that.</p> <p>2 Ann could be an effective independent</p> <p>3 salesperson, not an effective sales manager.</p> <p>4 Q. The next sentence she writes, "In</p> <p>5 addition, SSD is faced with a culture and a</p> <p>6 mindset issued from the NAM staff who are not</p> <p>7 used to selling database management services."</p> <p>8 I'll stop myself there and ask you,</p> <p>9 did NAM sell database management services up to</p> <p>10 the time of the acquisition of SmartSource</p> <p>11 Direct?</p> <p>12 A. No. I had. So to the extent that,</p> <p>13 you know, we had people on board who had sold</p> <p>14 database marketing services, employed by News</p> <p>15 America Marketing, the answer would be yes. But</p> <p>16 News America Marketing involved in the database</p> <p>17 marketing business up to that point, the answer</p> <p>18 would be no.</p> <p>19 Q. Were you not selling database</p> <p>20 management --</p> <p>21 A. No.</p> <p>22 Q. So your experience was not</p>

48 (Pages 186 to 189)

Mixon, Christopher

July 18, 2007

New York, NY

<p style="text-align: right;">Page 190</p> <p>1 translating into sales, was it?</p> <p>2 A. Yes. I mean, I went on client calls</p> <p>3 with the sales staff so to the extent that, was I</p> <p>4 out there selling? Yeah, you bet I was out there</p> <p>5 selling. You know, it was my primary</p> <p>6 responsibility having an account list and going</p> <p>7 out and calling on those accounts, the answer is</p> <p>8 no.</p> <p>9 Q. How many sales calls did you attend</p> <p>10 with Bob Fireman or Ann Raider?</p> <p>11 A. I don't know that I attended any</p> <p>12 sales calls with Bob Fireman. That's not really</p> <p>13 what he was doing. Bob I think was more</p> <p>14 comfortable in an operations role early on. I</p> <p>15 think later in his tenure, I think we may have</p> <p>16 asked him to get out and make some business</p> <p>17 happen because not much was happening.</p> <p>18 With Ann Raider I think I was out on</p> <p>19 several calls.</p> <p>20 Q. During these calls, did she</p> <p>21 articulate the concerns that she had about the</p> <p>22 way the business was being operated?</p>	<p style="text-align: right;">Page 192</p> <p>1 STATE OF NEW YORK)</p> <p>2 ss:</p> <p>3 COUNTY OF NEW YORK)</p> <p>4</p> <p>5 I, CHRISTOPHER MIXSON, the witness</p> <p>6 herein, having read the foregoing testimony of</p> <p>7 the pages of this deposition, do hereby certify</p> <p>8 it to be a true and correct transcript, subject</p> <p>9 to the corrections, if any, shown on the attached</p> <p>10 page.</p> <p>11 oOo</p> <p>12</p> <p>13</p> <p>14</p> <p>15 <u>CHRISTOPHER MIXSON</u></p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
<p style="text-align: right;">Page 191</p> <p>1 A. I don't recall.</p> <p>2 Q. You don't recall any discussions with</p> <p>3 Ann Raider during these sales calls, I take it?</p> <p>4 A. I don't recall any specific</p> <p>5 discussions. This was -- this was seven years</p> <p>6 ago. I don't recall that.</p> <p>7 MR. PETERS: Why don't you give me a</p> <p>8 few minutes.</p> <p>9 (Recess taken.)</p> <p>10 MR. PETERS: I have nothing further.</p> <p>11 THE WITNESS: Good. Thanks.</p> <p>12 (Time noted: 3:33 p.m.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 193</p> <p>1 C E R T I F I C A T E</p> <p>2 STATE OF NEW YORK)</p> <p>3 : ss.</p> <p>4 COUNTY OF NEW YORK)</p> <p>5 I, DAVID LEVY, CSR, a Shorthand</p> <p>6 Reporter and Notary Public within and</p> <p>7 for the State of New York, do hereby</p> <p>8 certify:</p> <p>9 That CHRISTOPHER MIXSON, the</p> <p>10 witness whose deposition is hereinbefore</p> <p>11 set forth, was duly sworn by me and that</p> <p>12 such deposition is a true record of the</p> <p>13 testimony given by the witness.</p> <p>14 I further certify that I am not</p> <p>15 related to any of the parties to this</p> <p>16 action by blood or marriage, and that I</p> <p>17 am in no way interested in the outcome</p> <p>18 of this matter.</p> <p>19 IN WITNESS WHEREOF, I have</p> <p>20 hereunto set my hand this 29th day of</p> <p>21 July, 2007.</p> <p>22 DAVID LEVY, CSR</p>

49 (Pages 190 to 193)

Henderson Legal Services
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EXHIBIT D

Garofalo, Martin

July 17, 2007

New York, NY

Page 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

-----x

ROBERT FIREMAN and ANN RAIDER,

Plaintiff,

Civil Action No.

-against-

05-1740MLW

NEWS AMERICA MARKETING IN-STORE,

INC.,

Defendant.

-----x

July 17, 2007

10:02 a.m.

Deposition of MARTIN GAROFALO, taken by
the Plaintiffs, pursuant to Notice, at the
offices of News Corp, 1211 Avenue of the
Americas, New York, New York, before David
Levy, CSR, a Notary Public of the State of New
York.

Henderson Legal Services
202-220-4158

Garofalo, Martin

July 17, 2007

New York, NY

Page 2	Page 4
<p>1 A P P E A R A N C E S:</p> <p>2</p> <p>3 TODD & WELD LLP</p> <p>4 Attorneys for Plaintiffs</p> <p>5 28 State Street</p> <p>6 Boston, Massachusetts 02109</p> <p>7 BY: KEVIN T. PETERS, ESQ.</p> <p>8</p> <p>9 HOLLAND & KNIGHT LLP</p> <p>10 Attorneys for Defendant</p> <p>11 10 St. James Avenue</p> <p>12 Boston, Massachusetts 02116-3889</p> <p>13 BY: GORDON P. KATZ, ESQ.</p> <p>14</p> <p>15 ALSO PRESENT:</p> <p>16 JORDAN LIPPNER, ESQ.,</p> <p>17 In-house Counsel, News Corp.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 M A R T I N G A R O F A L O , having been duly</p> <p>2 sworn by the Notary Public, was examined and</p> <p>3 testified as follows:</p> <p>4 EXAMINATION BY</p> <p>5 MR. PETERS:</p> <p>6 Q. Good morning, Mr. Garofalo. I'm</p> <p>7 Kevin Peters. We met briefly a moment ago.</p> <p>8 Before you and I start our question-and-answer</p> <p>9 session, let me ask your attorney --</p> <p>10 MR. PETERS: -- if we should be</p> <p>11 proceeding under the same stipulations as</p> <p>12 we have in the previous depositions.</p> <p>13 MR. KATZ: Yes.</p> <p>14 MR. PETERS: Mr. Reporter, want us to</p> <p>15 repeat those? We will reserve objections</p> <p>16 except as to the form of the question</p> <p>17 until the time of trial, or use of the</p> <p>18 transcript in a dispositive motion.</p> <p>19 We will reserve motions to strike</p> <p>20 until the time of trial, or use of the</p> <p>21 transcript in dispositive motion.</p> <p>22 The witness will read and have thirty</p>
Page 3	Page 5
<p>1 ----- I N D E X -----</p> <p>2 WITNESS EXAMINATION BY PAGE</p> <p>3 MARTIN GAROFALO MR. PETERS 4</p> <p>4</p> <p>5 PLAINTIFF EXHIBITS (GAROFALO) FOR IDENT.</p> <p>6 39 Presentation entitled, 67</p> <p>7 "SmartSource, a View of the</p> <p>8 Future, Two Paces Ahead"</p> <p>9 40 E-mail dated 3/7/03, Raider to 100</p> <p>10 Garofalo</p> <p>11 41 E-mail chain Bates numbered FR1318 150</p> <p>12 42 Set of presentation documents 156</p> <p>13 43 Organization chart Bates numbered 164</p> <p>14 FR3740, previously marked as</p> <p>15 Exhibit 34</p> <p>16 44 Six-page document Bates numbered 157</p> <p>17 NAM 828 through 833</p> <p>18 45 Single-page document Bates 157</p> <p>19 numbered FR3461</p> <p>20 46 Single-page document Bates 157</p> <p>21 numbered FR4889</p> <p>22</p>	<p>1 days to fill out an errata sheet and sign</p> <p>2 the errata sheet under the penalty of</p> <p>3 perjury, but we will waive notary.</p> <p>4 Q. Mr. Garofalo, would you introduce</p> <p>5 yourself to us, give us your name, spelling and</p> <p>6 where you live.</p> <p>7 A. Sure. It's Martin Garofalo. It's</p> <p>8 M-a-r-t-i-n, and the last name is</p> <p>9 G-a-r-o-f-a-l-o, and I currently live at 37</p> <p>10 Gramercy Avenue in Rye, New York.</p> <p>11 Q. Are you employed, Mr. Garofalo?</p> <p>12 A. I am.</p> <p>13 Q. Where do you work?</p> <p>14 A. News America Marketing.</p> <p>15 Q. What's your position with the</p> <p>16 company?</p> <p>17 A. Executive vice president of trade.</p> <p>18 Q. Can you tell me about your education?</p> <p>19 A. Sure. Graduated from high school in</p> <p>20 Pascack Hills in New Jersey, attended Georgetown</p> <p>21 University, and had a major in marketing and</p> <p>22 finance there.</p>

2 (Pages 2 to 5)

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202-220-4158

Garofalo, Martin

July 17, 2007

New York, NY

Page 6	Page 8
<p>1 Q. When did you graduate from 2 Georgetown? 3 A. 1980. 4 Q. Do you have any additional formal 5 education? 6 A. No. 7 Q. Once you graduated from Georgetown, 8 would you take me through your job path. 9 A. Sure. After graduation, I went to 10 work at Procter & Gamble out in Cincinnati. I 11 spent about three years there, and then I worked 12 three years approximately at Nestle Foods, and 13 spent about two years or so at the National 14 Football League before joining what is now News 15 America Marketing. 16 Q. What was it called at the time you 17 joined? 18 A. Product Movers. 19 Q. When was that? 20 A. I believe 1987. 21 Q. What did you do at Procter & Gamble? 22 A. Product management, promotion work</p>	<p>1 back in, I think, 2000, spent a year-and-a-half, 2 almost, there, I believe, and then came on board 3 back to the core part of the business, and 4 working in the current area that I'm in now. 5 Q. What was your position immediately 6 prior to joining the IGroup? 7 A. I believe it was eastern division 8 manager, so it was an EVP, eastern division 9 title. 10 Q. So your title was executive vice 11 president of what? Prior to -- 12 A. Eastern division, I believe. 13 Q. Okay. And was it in marketing, was 14 it in sales? 15 A. Sales. 16 Q. Would you tell me what your job 17 responsibilities were at the time. 18 A. Basically generating sales from the 19 eastern portion of the United States. 20 Q. Did you have a sales force that you 21 managed? 22 A. Yes.</p>
Page 7	Page 9
<p>1 initially and then product management work. 2 Q. How about Nestle? 3 A. Brand management, market management. 4 Q. What did you do at the NFL? 5 A. Marketing manager. 6 Q. So you've been in marketing ever 7 since getting out of Georgetown. 8 A. Yeah. 9 Q. And are you presently in marketing? 10 Is that a component of your job responsibilities? 11 A. Yes. 12 Q. Well, let's start at Product Movers 13 and move up to the present. Can you take me 14 through your job path at News America Marketing 15 or whatever it was once known as. 16 A. Yes. I started as a sales rep at 17 Product Movers, and the company was acquired by 18 News Corporation and then I had, you know, a 19 succession of sales jobs leading to sales 20 management, everything from national sales 21 manager, member of the executive committee, and I 22 then moved over to the IGroup when it was formed</p>	<p>1 Q. Could you describe the sales force 2 for me; in other words, to whom did they market? 3 A. Sure. 4 Q. And how were they comprised? 5 A. Yes. It was a typical sales 6 structure, I believe, in that we had several 7 group sales managers, then account directors 8 reporting to them, and account associates below 9 that, and the entry-level position below that. 10 And basically, we would go out and call on 11 predominantly packaged goods manufacturers to run 12 in the FSI. 13 Q. FSI meaning freestanding insert 14 business? 15 A. Yes. And then we had in-store as 16 well. 17 Q. How large was the sales force that 18 you managed? 19 A. I don't recall specifically. It was 20 fairly large. 21 Q. Over a hundred? 22 A. Probably.</p>

3 (Pages 6 to 9)

Garofalo, Martin

July 17, 2007

New York, NY

<p style="text-align: right;">Page 10</p> <p>1 Q. Did you have a counterpart that 2 handled, or counterparts that handled other parts 3 of the country? 4 A. Yes. 5 Q. How many EVPs of sales were there 6 when you, just prior to the time you joined the 7 IGroup? 8 A. I think there were three of us at the 9 time, yes. 10 Q. Who were they? 11 A. On the West Coast, I believe it was 12 Mel Liebergall, and I believe that the central 13 region manager was Wes Naze. 14 Q. How do you spell Mr. Naze's -- 15 A. N-a-z-e. 16 Q. And Liebergall is spelled how? 17 A. L-i-e-b-e-r-g-a-l-l. 18 Q. Did Mr. Liebergall and Mr. Naze have 19 sales forces roughly comparable to yours in size? 20 A. Basically. 21 Q. So the sales force that were calling 22 on the manufacturing clients, packaged good</p>	<p style="text-align: right;">Page 12</p> <p>1 that is distributed in newspapers. And then we 2 had several in-store programs at the time as well 3 as FSI. 4 Q. When you joined the IGroup in 2000, 5 what was your position with the IGroup? 6 A. I was again EVP, sales for the 7 IGroup. 8 Q. How did your job responsibilities 9 change? 10 A. Well, it was a start-up operation. 11 So it changed quite a bit. 12 Q. Could you describe what your job 13 responsibilities were as the EVP of sales for the 14 IGroup? 15 A. As the programs were being developed, 16 it was my responsibility to see if we could sell 17 them into the marketplace. 18 Q. What programs are we talking about 19 now? 20 A. Well, we had the purchase of a 21 company that was now in the Internet coupon 22 arena, so my responsibilities were going out and</p>
<p style="text-align: right;">Page 11</p> <p>1 clients, was about, what, three or four hundred 2 sales reps? 3 A. Probably around 250 at the time, 4 would be my best recall. 5 Q. What were your responsibilities in 6 terms of your sales force? Can you describe them 7 for me? 8 A. Basic management, setting budgets and 9 overseeing sales activities. 10 Q. Did you have control over what 11 products the sales force sold? 12 A. Control -- I guess in combination 13 with the marketing department and the executive 14 committee, yes. 15 Q. Would you take me through the process 16 of determining what the sales force, products the 17 sales force would sell at the time you were the 18 EVP of sales for the east. 19 A. Yes. I believe at that time, we had 20 the FSI product, and there's, you know, several 21 variations on that, but it's basically putting 22 coupons or advertisements on the printed page</p>	<p style="text-align: right;">Page 13</p> <p>1 seeing if we could sell that product in the 2 marketplace. And that was -- that was primarily 3 it. 4 Q. So most of your job responsibilities 5 centered on SmartSource.com? 6 MR. KATZ: You have to say yes. 7 A. Yes. 8 Q. And what were your job 9 responsibilities with SmartSource.com? You 10 described them as trying to sell SmartSource's 11 products. 12 A. Um-hum. 13 Q. Could you be more specific or precise 14 than that? 15 A. There was a suite of products that, 16 when we purchased the company, that allowed us to 17 finish the business that we took over, and we 18 were trying to fine-tune and find programs that 19 would really resonate in the marketplace. So my 20 responsibilities were meeting with clients and 21 helping to develop that process, and also 22 developing a sales force behind that effort.</p>

4 (Pages 10 to 13)

Garofalo, Martin

July 17, 2007

New York, NY

<p style="text-align: right;">Page 14</p> <p>1 Q. So you were really still in the 2 development stage in terms of refining 3 SmartSource.com's products when you joined the 4 IGroup in 2000; is that correct? 5 A. Yes. 6 Q. Can you describe what products 7 SmartSource.com had to offer when you were with 8 SmartSource.com or with the IGroup for that 9 year-and-a-half starting in 2000. 10 A. Yeah, we had a program that was 11 essentially FSI online. So the consumer was able 12 to click on to the website and then actually have 13 a coupon mailed to them if they gave their name 14 and address, and they selected their selections 15 of what coupons they wished to get, Gillette 16 Razor, Tide Detergent, and they would be mailed 17 to them. That was the initial product offering 18 that we had. 19 Q. Did this require you to work with 20 manufacturers to describe the products that you 21 had to offer? In other words, folks like 22 Gillette?</p>	<p style="text-align: right;">Page 16</p> <p>1 recall for me about whether it made sense from a 2 business perspective to use, let's call it the 3 large sales force, the national sales force, to 4 market SmartSource.com's products? 5 A. I don't have any specific recall in 6 that kind of discussion. 7 Q. I'm following up on your observation 8 or testimony that the products were sufficiently 9 different that some decision was made to use a 10 much smaller sales force for SmartSource.com's 11 products. 12 Can you take me through the reasoning 13 that led to that conclusion? 14 MR. KATZ: Objection to form. 15 You can answer. 16 A. It was a new program for the company. 17 And it was a new way to, you know, totally new 18 medium to distribute coupons and offerings and 19 advertising, really. The vernacular that we used 20 in terms of "clicks" was brand-new at the time. 21 So it required, I believe, a little bit different 22 expertise.</p>
<p style="text-align: right;">Page 15</p> <p>1 A. Yes. 2 Q. Is that something your sales force 3 did, went out and tried to sell this concept to 4 manufacturers? 5 A. Yes. 6 Q. How many sales -- let me ask it 7 again. How large was the sales force for 8 SmartSource.com? 9 A. It varied at different times, 10 probably from two people to -- my best 11 recollection would be maybe five or six. 12 Q. Why didn't News America Marketing use 13 the 250-person or so sales force that you and 14 Mr. Liebergall and Mr. Naze were managing just 15 prior to you joining the IGroup? 16 A. I think the offering was sufficiently 17 different in terms of the expertise in selling 18 the opportunity. However, the -- some contacts 19 were provided by the sales force. They knew of 20 this division and we would rely on them to open 21 doors and help us set up meetings. 22 Q. Was there discussion that you can</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. What kind of training did the sales 2 force get, the two- to six-person sales force 3 get, in SmartSource.com's products so that they 4 were able to market that concept to 5 manufacturers? 6 A. We held, you know, several smaller 7 seminars with the company that we acquired in 8 terms of what the offering was and how they had 9 gone about their sales effort to date. And that 10 was primarily it. We were learning the programs 11 ourselves. 12 Q. So there were a couple of seminars? 13 MR. KATZ: Objection. 14 A. Yes. 15 Q. Were written materials generated by 16 News America Marketing to help educate this small 17 sales force? 18 A. Yes. 19 Q. Were they PowerPoints? Could you 20 describe them for me in a general way? 21 A. Yeah. In general -- yeah, I really 22 can't recall exactly what we put out in the</p>

5 (Pages 14 to 17)

Garofalo, Martin

July 17, 2007

New York, NY

<p style="text-align: right;">Page 18</p> <p>1 marketplace.</p> <p>2 Q. Is it correct -- that's fine, and if</p> <p>3 it comes to you, just let me know -- is it</p> <p>4 correct to state that the training that the sales</p> <p>5 force received was done over a couple-of-day</p> <p>6 period?</p> <p>7 MR. KATZ: Objection.</p> <p>8 A. I would think it was almost a</p> <p>9 constant in terms of calling and asking questions</p> <p>10 of the tech people that were working on the West</p> <p>11 Coast and meetings and people going back and</p> <p>12 forth.</p> <p>13 Q. And the tech people are people that</p> <p>14 came over with SmartSource.com?</p> <p>15 MR. KATZ: Objection.</p> <p>16 A. Came over from --</p> <p>17 Q. Planet U.</p> <p>18 A. Planet U, yes.</p> <p>19 Q. Okay. Let's make sure we have the</p> <p>20 chronology here. Planet U was acquired by --</p> <p>21 excuse me, there was an investment made in</p> <p>22 Planet U, correct?</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. Do you know how much News America</p> <p>2 Marketing invested in Planet U?</p> <p>3 A. I don't know offhand.</p> <p>4 Q. Do you have a general recollection?</p> <p>5 MR. KATZ: Objection.</p> <p>6 Q. Thousands or millions?</p> <p>7 A. I think it was in the millions.</p> <p>8 Q. Tens of millions?</p> <p>9 MR. KATZ: Objection.</p> <p>10 A. I really -- I don't recall -- I</p> <p>11 wasn't involved with that. So...</p> <p>12 Q. Do you know how much News America</p> <p>13 Marketing invested in SoftCard?</p> <p>14 A. No.</p> <p>15 Q. Do you know how much News America</p> <p>16 Marketing paid for CCMI?</p> <p>17 A. I don't recall.</p> <p>18 Q. Were you involved in the acquisition</p> <p>19 of CCMI?</p> <p>20 A. No.</p> <p>21 Q. Were you involved in any of the</p> <p>22 discussions that led to the acquisition of CCMI?</p>
<p style="text-align: right;">Page 19</p> <p>1 A. Yes, my understanding is yes.</p> <p>2 Q. And that investment ultimately turned</p> <p>3 out to be the SmartSource.com component of the</p> <p>4 IGroup.</p> <p>5 A. Yes.</p> <p>6 Q. And then there was another company</p> <p>7 called SoftCard?</p> <p>8 A. Yes.</p> <p>9 Q. And that was an investment as well?</p> <p>10 A. Yes.</p> <p>11 Q. And then there was, of course, CCMI,</p> <p>12 and those three entities comprised the IGroup.</p> <p>13 A. To my knowledge, yes.</p> <p>14 Q. And when you say there was a constant</p> <p>15 communication with the West Coast, you're talking</p> <p>16 about communications with the people at Planet U;</p> <p>17 is that --</p> <p>18 A. Yes. And additionally, we had -- my</p> <p>19 understanding, my recollection is, we had a</p> <p>20 person that was kind of the liaison to that group</p> <p>21 named Talbott Roche, so I was contacting with her</p> <p>22 as well. She was helping us.</p>	<p style="text-align: right;">Page 21</p> <p>1 A. Not that I recall.</p> <p>2 Q. Were you part of any due diligence</p> <p>3 team that evaluated CCMI as a potential</p> <p>4 opportunity?</p> <p>5 A. No.</p> <p>6 Q. Were you involved in any of the</p> <p>7 discussions that led to the contract between CCMI</p> <p>8 and News America Marketing?</p> <p>9 A. Not that I recall.</p> <p>10 Q. Other than your attorney or any</p> <p>11 attorneys that work with Mr. Katz, have you had</p> <p>12 any conversations about the process that led to</p> <p>13 the acquisition of CCMI that you can recall for</p> <p>14 us?</p> <p>15 A. Not in any detail, no.</p> <p>16 Q. Do you remember having any</p> <p>17 conversations with Mr. Carlucci about the</p> <p>18 acquisition?</p> <p>19 A. No.</p> <p>20 Q. Have you ever spoken to Mr. Carlucci</p> <p>21 about this litigation?</p> <p>22 A. Yes.</p>

6 (Pages 18 to 21)

Garofalo, Martin

July 17, 2007

New York, NY

<p style="text-align: right;">Page 22</p> <p>1 Q. When?</p> <p>2 A. In the hallway, just -- Gordon and I</p> <p>3 just ran into him.</p> <p>4 Q. It was the three of you together?</p> <p>5 MR. KATZ: It was.</p> <p>6 Q. Have you spoken to anyone other than</p> <p>7 Mr. Carlucci about the litigation?</p> <p>8 A. I'd say yes.</p> <p>9 Q. Are you married?</p> <p>10 A. Yes.</p> <p>11 Q. I'll exclude your wife.</p> <p>12 A. Okay.</p> <p>13 Q. With whom have you spoken about this</p> <p>14 litigation other than Mr. Carlucci and Mr. Katz?</p> <p>15 A. Chris Mixson and, my recollection is,</p> <p>16 Henry Lellouche.</p> <p>17 Q. Can you tell me when you spoke to</p> <p>18 Mr. Mixson?</p> <p>19 A. I'd say probably two weeks ago.</p> <p>20 Q. How many conversations did you have</p> <p>21 about the case?</p> <p>22 A. I believe it's a couple.</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. Nothing sticks in your mind about</p> <p>2 that discussion and what he said?</p> <p>3 A. The only thing that does stick in my</p> <p>4 mind is, he said that Ann and Bob were present.</p> <p>5 Q. Okay.</p> <p>6 A. But that's it.</p> <p>7 Q. But nothing beyond that --</p> <p>8 A. No.</p> <p>9 Q. -- that's memorable to you.</p> <p>10 A. No.</p> <p>11 Q. We were talking about the</p> <p>12 SmartSource.com start-up and I was asking</p> <p>13 questions about the use of the sales force.</p> <p>14 Did any other IGroup member -- by</p> <p>15 that I mean CCMI and SoftCard -- have a sales</p> <p>16 force?</p> <p>17 A. Yes.</p> <p>18 Q. Who?</p> <p>19 A. The SmartSource Direct had a sales</p> <p>20 force as well.</p> <p>21 Q. Did you oversee that sales force?</p> <p>22 A. Not directly.</p>
<p style="text-align: right;">Page 23</p> <p>1 Q. Can you tell me in substance what you</p> <p>2 discussed with Mr. Mixson?</p> <p>3 MR. KATZ: Just to advise, these are</p> <p>4 conversations that I wasn't part of or</p> <p>5 Jordan wasn't part of. They would have to</p> <p>6 be just you and Chris.</p> <p>7 THE WITNESS: Yes.</p> <p>8 A. Chris was having some scheduling -- I</p> <p>9 think for two days in a row and we were trying to</p> <p>10 figure out who can do which day. So that was the</p> <p>11 extent.</p> <p>12 Q. So it was really a scheduling issue,</p> <p>13 you didn't talk about the case in any substance?</p> <p>14 A. Yes.</p> <p>15 Q. Mr. Lellouche, could you tell me</p> <p>16 about your conversation or conversations with</p> <p>17 him?</p> <p>18 A. Just the fact that he was deposed.</p> <p>19 He reports to me now. So he, again, would tell</p> <p>20 me that he went to the deposition.</p> <p>21 Q. Did he say anything else?</p> <p>22 A. No, not that I can recall.</p>	<p style="text-align: right;">Page 25</p> <p>1 Q. Who did?</p> <p>2 A. I believe it was Henry Lellouche.</p> <p>3 Q. What was your job responsibility or</p> <p>4 job responsibilities in terms of the SSDI sales</p> <p>5 force?</p> <p>6 A. I believe it was, you know, broad</p> <p>7 oversight of what was going on there.</p> <p>8 Q. How big was the sales force?</p> <p>9 A. Again, no specificity, but I think at</p> <p>10 different times around the same size as the</p> <p>11 dot-com.</p> <p>12 Q. Did the dot-com sales force also</p> <p>13 market CCMI's sales force?</p> <p>14 A. Did the SmartSource dot-com</p> <p>15 represent --</p> <p>16 MR. KATZ: Objection to form.</p> <p>17 A. I don't specifically recall that, no.</p> <p>18 Q. The only sales force that sold</p> <p>19 SmartSource direct's products and services was</p> <p>20 the sales force that Mr. Lellouche oversaw; is</p> <p>21 that a correct statement?</p> <p>22 MR. KATZ: Objection.</p>

7 (Pages 22 to 25)

Garofalo, Martin

July 17, 2007

New York, NY

<p style="text-align: right;">Page 26</p> <p>1 A. I would say yes, and that -- and the 2 same situation with -- set up with the core sales 3 force of the two hundred or so salespeople, when 4 possible, to open doors. 5 Q. Could you describe that for me? The 6 interaction, in other words, between the small 7 SmartSource Direct sales force and the national 8 sales force of News America Marketing. 9 MR. KATZ: Objection. 10 A. Okay. If I can, and my memory serves 11 me well, in general, the way that we would go to 12 market is, we try to be as valuable as we can to 13 the companies that we call on. So if we could 14 satisfy their needs in various areas, it's our 15 desire to do so. 16 So for instance, you know, one of my 17 previous jobs was heading up what we called the 18 partnership group, which was sports affinities 19 and cause-related marketing. And we would put 20 together a sales piece so when the general sales 21 force were selling, they would get into a 22 discussion, "Oh, I would like to do something</p>	<p style="text-align: right;">Page 28</p> <p>1 case? In other words, was there a SmartSource 2 Direct sales brochure that was provided to the 3 250 or so sales representatives? 4 A. Yes, there was one. And again, I'm 5 not sure on the exact timing of it, or who put it 6 together. 7 Q. Let me ask this: 8 Was it during your time with the 9 IGroup? 10 A. My understanding is yes. My 11 recollection is yes. 12 Q. Do you remember seeing it? 13 A. I do remember vaguely seeing a piece 14 but, again, I don't have any specific 15 recollection of it. 16 Q. Is it fair to say that the vast 17 majority of your attention was spent on 18 SmartSource.com? 19 MR. KATZ: Objection. 20 You can answer. 21 A. I would say the majority of my time 22 was yes, and then trying to develop other</p>
<p style="text-align: right;">Page 27</p> <p>1 around the Superbowl or the World Series or the 2 All-Star game," they could pull out a one-page 3 sales sheet essentially and say, "Oh, this is our 4 capabilities in this area; if you're interested I 5 could set you up with a person from the 6 partnership team." And my understanding is that 7 at this time, we developed and had similar 8 materials that the sales force would have for our 9 IGroup portfolio. 10 Q. So there was some type of one-page or 11 two-page overview of what SmartSource Direct had 12 to offer that was provided to the national sales 13 force? 14 A. That's my understanding, yes. 15 Q. how would we describe that piece of 16 paper as between us in this deposition? 17 A. A sales brochure. 18 Q. Sales brochure. Who developed the 19 sales brochure? 20 A. Again, I don't recall the specifics 21 on who did this particular one. 22 Q. Do you know that it happened in this</p>	<p style="text-align: right;">Page 29</p> <p>1 programs between the three different entities. A 2 large part of the time was spent on a test that 3 we had done at Furr's that was a SoftCard product, 4 and that was a huge amount of time as well. 5 Q. F-u-r-s? 6 A. F-u-r-r-s, I believe. 7 Q. And what was the test, can you 8 describe it for me? 9 A. Sure. It was a coupon machine in the 10 store that would distribute coupons specifically 11 for the shopper. 12 Q. So by -- let me see if I understand 13 this conceptually. SoftCard was intended to be 14 some type of intelligent card; in other words, a 15 card that could store data? 16 A. Exactly. 17 Q. And there were machines that were 18 intended to read that card and provide 19 customer-specific couponing that tracked buying 20 habits; is that a high-level description of what 21 you were trying to accomplish? 22 A. That is a good description, yes.</p>

8 (Pages 26 to 29)

Garofalo, Martin

July 17, 2007

New York, NY

Page 30	Page 32
<p>1 Q. And there was a test at Furr's?</p> <p>2 A. Yes.</p> <p>3 Q. Is that a store?</p> <p>4 A. Yes, it is.</p> <p>5 Q. How did it work?</p> <p>6 A. I don't think it worked too well.</p> <p>7 Q. Do you know what ultimately happened</p> <p>8 to SoftCard, in other words, whether News America</p> <p>9 Marketing ultimately went with the investment?</p> <p>10 A. I don't have any recall on what we</p> <p>11 did with it.</p> <p>12 Q. It failed; is that --</p> <p>13 A. Yes.</p> <p>14 Q. -- a fair-enough statement?</p> <p>15 A. Yes.</p> <p>16 Q. There is no present use of SoftCard</p> <p>17 within News America Marketing, is there?</p> <p>18 A. No.</p> <p>19 Q. And there's no present use of</p> <p>20 SmartSource.com; is that true?</p> <p>21 A. SmartSource.com is an ongoing --</p> <p>22 Q. Is ongoing. But the nexus between</p>	<p>1 So I can't recall if it was 40 hours,</p> <p>2 but we were working many more hours than 40</p> <p>3 during the week. So it's conceivable that that</p> <p>4 would be true.</p> <p>5 Q. But all the work that you were doing,</p> <p>6 Mr. Garofalo, was to try to develop a business</p> <p>7 that integrated SmartSource.com, SmartSource</p> <p>8 Direct and SoftCard; is that true?</p> <p>9 A. At various times, yes. We were</p> <p>10 exploring that possibility.</p> <p>11 Q. Let me back up a little bit. Were</p> <p>12 you involved in the formation of the IGroup or</p> <p>13 were you brought in after it already existed?</p> <p>14 A. I was brought in and told that they</p> <p>15 were forming an IGroup and they would like me to</p> <p>16 join.</p> <p>17 Q. Were you involved in any of the</p> <p>18 discussions that led to the decision to form the</p> <p>19 IGroup?</p> <p>20 A. No, not that I can recall.</p> <p>21 Q. Did anyone explain to you why the</p> <p>22 IGroup was formed and, if so, who?</p>
Page 31	Page 33
<p>1 SmartSource.com and SoftCard, that never came</p> <p>2 together; is that true?</p> <p>3 MR. KATZ: Objection.</p> <p>4 A. That is true, yes.</p> <p>5 Q. So your time as the EVP of sales at</p> <p>6 the IGroup was taken up mostly with</p> <p>7 SmartSource.com and putting together this test</p> <p>8 for Furr's, is that true?</p> <p>9 MR. KATZ: Objection.</p> <p>10 A. My time?</p> <p>11 Q. Yes.</p> <p>12 A. Yes.</p> <p>13 Q. How much time did you spend on CCMI's</p> <p>14 business or SmartSource Direct, as it was then</p> <p>15 known?</p> <p>16 A. I think it varied greatly from week</p> <p>17 to week.</p> <p>18 Q. Sometimes it was 40 hours a week?</p> <p>19 A. Um -- hum. Conceivably. I'm trying</p> <p>20 to think back in those days and there was, you</p> <p>21 know, heavy discussions in terms of what we were</p> <p>22 trying to do in -- with the entire unit.</p>	<p>1 A. There was never any explicit purpose</p> <p>2 given overall that I can recall. No one sat me</p> <p>3 down and said, "Here's what we're going to do and</p> <p>4 this is why we're doing it."</p> <p>5 Q. Was CCMI ever viewed during your</p> <p>6 tenure with the IGroup as a stand-alone entity</p> <p>7 with its own products, apart from SoftCard and</p> <p>8 apart from SmartSource.com?</p> <p>9 MR. KATZ: Objection.</p> <p>10 A. I would say yes.</p> <p>11 Q. So let me explore it another way.</p> <p>12 Did the effort to develop the IGroup and to get</p> <p>13 products that the IGroup sold, did that really</p> <p>14 consume your attention or were you working</p> <p>15 independently to sell these different things?</p> <p>16 MR. KATZ: Objection.</p> <p>17 A. I'd say both. I think what we were</p> <p>18 trying to do was make money from each of the</p> <p>19 different entities as best we could while trying</p> <p>20 to come up with an even bigger plan ultimately,</p> <p>21 if that would work.</p> <p>22 Q. How did your time break down in</p>

9 (Pages 30 to 33)

Garofalo, Martin

July 17, 2007

New York, NY

<p style="text-align: right;">Page 34</p> <p>1 percentages between the different components of 2 the IGroup? 3 A. Again, it's hard to recall any given 4 week during that time period of that 5 year-and-a-half. I know we would schedule 6 business reviews with the entities that we had 7 acquired; we would set up sales meetings with 8 clients to do both exploratory and actually try 9 to make some sales, and then we had a lot of 10 internal meetings with the people we were hiring 11 and bringing on staff. 12 And I was helping out in both the 13 management and the key guy from being out in the 14 field, trying to sell the properties as well. 15 Q. What were CCMI's products? 16 A. Basically at that point, they had, 17 best of my recollection again is, the card 18 distribution, frequent shopper card distribution, 19 and data management entity. 20 Q. Did you evaluate those two aspects of 21 CCMI's business to determine how to market them? 22 A. What do you mean --</p>	<p style="text-align: right;">Page 36</p> <p>1 A. Yes. 2 Q. Can you tell me what you did to learn 3 about CCMI's card distribution business. 4 A. Again, I recall going with others 5 from the team that assembled early on and to 6 meet, from my first recollection, up to Boston 7 for -- to the CCMI offices at the time where we 8 were kind of given a tutorial about what the 9 programs were, who did what, what kind of 10 applications in the marketplace they had 11 endeavored to do at that point, and then it was 12 an ongoing process from there. 13 Most of that was done by the 14 individual who headed that unit up at the time, 15 and not by myself. 16 Q. Who was that? 17 A. Henry Lellouche. 18 Q. So you would agree that in order to 19 sell the card distribution aspect of CCMI, the 20 sales force would have to learn about it, 21 correct? 22 A. Um-hum.</p>
<p style="text-align: right;">Page 35</p> <p>1 MR. KATZ: Objection. 2 A. -- by did I evaluate them? 3 Q. Let's me take it in smaller steps. 4 In order to sell a product you have to know what 5 you're selling. 6 A. Exactly. 7 Q. In order to market a product, you 8 have to know how to market it and therefore, you 9 have to understand what all the moving pieces 10 are, what the components are. 11 A. Yes. 12 Q. And the two pieces that you've listed 13 for me at CCMI are card distribution and data 14 management. And those are the only two that you 15 can recall right now? 16 A. Yes. 17 Q. As your, or in your role as the EVP 18 of sales, did you evaluate the card distribution 19 component of CCMI's business so that you could 20 learn enough about it so that you could sell it? 21 A. Yes. 22 Q. Market it?</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. Yes? 2 A. Yes. 3 Q. Mr. Lellouche would have to learn 4 about it. 5 A. Yes. 6 Q. But it wasn't your expectation that 7 either Mr. Lellouche or the sales force would 8 develop expertise that were superior to Ann 9 Raider and Bob Fireman's expertise in card 10 distribution; is that correct? 11 A. Not initially no. 12 Q. Pardon? 13 A. Not initially 14 MR. KATZ: Objection. 15 You can answer. 16 A. Not initially, no. 17 Q. Let me see if I can answer your "no." 18 You didn't expect the sales force and you didn't 19 expect Mr. Lellouche to know more about card 20 distribution than Ann Raider and Bob Fireman? 21 A. Not initially, no. 22 Q. You expected them to learn more about</p>

10 (Pages 34 to 37)

Henderson Legal Services
202-220-4158

Garofalo, Martin

July 17, 2007

New York, NY

<p style="text-align: right;">Page 38</p> <p>1 card distribution as time went by?</p> <p>2 A. Yes.</p> <p>3 Q. And that eventually they would have</p> <p>4 equal or superior knowledge about card</p> <p>5 distribution to Ann Raider and Bob Fireman; is</p> <p>6 that your expectation?</p> <p>7 A. I think that is --</p> <p>8 Q. If not your expectation, your hope.</p> <p>9 A. Yes.</p> <p>10 Q. That's what you say. And in order to</p> <p>11 learn about card distribution, other than</p> <p>12 speaking with Ann Raider and Bob Fireman, do you</p> <p>13 know if you or Mr. Lellouche did anything other</p> <p>14 than that?</p> <p>15 A. I think speaking to the -- various</p> <p>16 clients, and that was the other way of being</p> <p>17 educated, I think.</p> <p>18 Q. Those two ways, speak with Bob and</p> <p>19 Ann, and speak with clients?</p> <p>20 A. Yes.</p> <p>21 Q. Any other ways that you brought</p> <p>22 yourself up to speed sufficiently to be able to</p>	<p style="text-align: right;">Page 40</p> <p>1 A. It's hard to evaluate. I'd probably</p> <p>2 say no.</p> <p>3 Q. Did Seth Epstein?</p> <p>4 A. I'd say, looking back, no.</p> <p>5 Q. So who within News America Marketing</p> <p>6 other than Ann Raider and Bob Fireman had</p> <p>7 expertise in card distribution and card</p> <p>8 marketing?</p> <p>9 A. At the time of the acquisition, it</p> <p>10 would be those two individuals you just</p> <p>11 mentioned.</p> <p>12 Q. Did anyone during your</p> <p>13 year-and-a-half with the IGroup develop expertise</p> <p>14 in card marketing other than Ann Raider and Bob</p> <p>15 Fireman?</p> <p>16 A. I think the answer is yes.</p> <p>17 Q. Who would that person be, or people</p> <p>18 be?</p> <p>19 A. To an extent, myself and definitely</p> <p>20 Henry, would be my thinking.</p> <p>21 MR. KATZ: Ken, could we take a break</p> <p>22 when you have --</p>
<p style="text-align: right;">Page 39</p> <p>1 market that aspect of CCMI's business?</p> <p>2 A. There were other people that were</p> <p>3 willing to give advice, I remember, back then,</p> <p>4 and trying to figure out, you know, who actually</p> <p>5 was credible. But there was other people we were</p> <p>6 we were speaking to as well.</p> <p>7 Q. Can you tell me who?</p> <p>8 A. One was Seth Epstein, and then a lot</p> <p>9 of people that -- of the other entities we had</p> <p>10 acquired were offering a lot of advice, I</p> <p>11 remember, at the time as well.</p> <p>12 Q. People from SoftCard, people from</p> <p>13 SmartSource.com?</p> <p>14 A. Yes.</p> <p>15 Q. They had expertise in card marketing?</p> <p>16 A. Supposedly. Some people said they</p> <p>17 did.</p> <p>18 Q. Who?</p> <p>19 A. One particular individual is Tom</p> <p>20 Hinse, and Ken Powell, are the two that I recall.</p> <p>21 Q. Did they have expertise in card</p> <p>22 marketing?</p>	<p style="text-align: right;">Page 41</p> <p>1 MR. PETERS: Let me just chase this</p> <p>2 down just a little bit.</p> <p>3 Q. In the year-and-a-half that you were</p> <p>4 the EVP of sales at the IGroup, you believe that</p> <p>5 Henry Lellouche became an expert in card</p> <p>6 distribution?</p> <p>7 A. Yes.</p> <p>8 Q. Do you believe his expertise were</p> <p>9 superior to Ann Raider and Bob Fireman's?</p> <p>10 A. I think different skillsets in terms</p> <p>11 of how to try to sell the proposition.</p> <p>12 Q. What about yourself, do you know in</p> <p>13 the year-and-a-half that you developed expertise</p> <p>14 that were superior to Ann Raider and Bob</p> <p>15 Fireman's in this one segment of CCMI's business,</p> <p>16 card distribution?</p> <p>17 A. I'd say no.</p> <p>18 Q. You mentioned when we were talking</p> <p>19 about SmartSource.com, that there was constant</p> <p>20 discussion with California; in other words, the</p> <p>21 people that were from Planet U, so that you could</p> <p>22 understand Planet U's business, is that correct?</p>

11 (Pages 38 to 41)

Henderson Legal Services
202-220-4158

Garofalo, Martin

July 17, 2007

New York, NY

Page 42	Page 44
<p>1 A. Yes.</p> <p>2 Q. And that's a prudent business</p> <p>3 practice, isn't it, to make sure that you keep</p> <p>4 the lines of communication open with people who</p> <p>5 are expert in their field?</p> <p>6 A. Yes.</p> <p>7 Q. The same would go here; to the extent</p> <p>8 Ann Raider and Bob Fireman had expertise in card</p> <p>9 distribution and card marketing, they should have</p> <p>10 been consulted?</p> <p>11 MR. KATZ: Objection.</p> <p>12 A. Yes.</p> <p>13 Q. Did anyone in the year-and-a-half</p> <p>14 that you were with the IGroup develop expertise</p> <p>15 in all aspects of card distribution other than</p> <p>16 Ann Raider and Bob Fireman?</p> <p>17 MR. KATZ: I'm sorry, what --</p> <p>18 MR. PETERS: Other than -- let me</p> <p>19 back up.</p> <p>20 MR. KATZ: Okay.</p> <p>21 Q. In the year-and-a-half that you were</p> <p>22 the EVP of sales for the IGroup, did anyone</p>	<p>1 the best salespeople in there and across the</p> <p>2 board in my experience, but they were the people</p> <p>3 that were hired by the group, yes.</p> <p>4 Q. Were the 250 or so person sales force</p> <p>5 directed to sale CCMI's products?</p> <p>6 A. I'm trying to think if, back at that</p> <p>7 time, what programs we had to sell. And to the</p> <p>8 extent that we had programs to sell, I really</p> <p>9 can't recall at that time because it morphed into</p> <p>10 other things at different times.</p> <p>11 Q. When CCMI was acquired, it had</p> <p>12 salable products, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Was the sales force directed to sell</p> <p>15 those products during your tenure?</p> <p>16 A. Yes.</p> <p>17 Q. The whole 250 or so?</p> <p>18 A. Again, I don't recall. I wasn't</p> <p>19 involved with that selling piece of it. But yes.</p> <p>20 Q. Well -- I'm sorry, sir, go ahead.</p> <p>21 A. No, and again, I'm trying to get my</p> <p>22 chronology right. I'm going back to my timing</p>
Page 43	Page 45
<p>1 within News America Marketing or the IGroup</p> <p>2 develop card distribution expertise that were</p> <p>3 superior to Ann Raider's and Bob Fireman's?</p> <p>4 A. Again, it's hard to tell who had</p> <p>5 superior, you know, knowledge. But the intention</p> <p>6 was to develop a sales force under Henry that</p> <p>7 would be able to sell that proposition in the</p> <p>8 marketplace. You know, working with Ann and Bob.</p> <p>9 Q. Are you satisfied that that sales</p> <p>10 force was ever developed?</p> <p>11 A. To the extent that it was operating</p> <p>12 and trying to make business happen, yes.</p> <p>13 Q. Was it a sales force that you were</p> <p>14 satisfied with by the time you left the IGroup?</p> <p>15 A. I think, yes, the sales force was</p> <p>16 adequate.</p> <p>17 Q. There was nothing about the sales</p> <p>18 force that you found lacking or wanting by the</p> <p>19 time you left the IGroup, is that a fair</p> <p>20 statement?</p> <p>21 MR. KATZ: Objection.</p> <p>22 A. I think we were always looking to get</p>	<p>1 after I left the IGroup and I had people that</p> <p>2 sold for me and I know that they were directed to</p> <p>3 assist in the sale of those products. So in</p> <p>4 terms of the -- my recollection of who was</p> <p>5 responsible for selling those then, I don't have</p> <p>6 an exact recollection.</p> <p>7 Q. You don't know, in other words,</p> <p>8 whether or not in the first year-and-a-half, the</p> <p>9 sales force, the large national sales force, was</p> <p>10 directed to sell the CCMI products; is that a</p> <p>11 fair statement?</p> <p>12 A. Again, not with perfect recall, no.</p> <p>13 MR. PETERS: You want to take a short</p> <p>14 break, Gordon?</p> <p>15 (Recess taken.)</p> <p>16 MR. KATZ: Are we on the record?</p> <p>17 THE WITNESS: One thing I did want to</p> <p>18 mention here, you were talking about</p> <p>19 expertise, and the more I think about it,</p> <p>20 is that Chris Mixson, who, I don't know if</p> <p>21 you know Chris, he's the --</p> <p>22 MR. PETERS: No.</p>

12 (Pages 42 to 45)

Garofalo, Martin

July 17, 2007

New York, NY

<p style="text-align: right;">Page 46</p> <p>1 THE WITNESS: -- you're going to meet 2 him anyway, but Chris I think was with the 3 entity that first launched a frequent 4 shopper card program through Citibank. So 5 Chris knew an awful lot about it as well. 6 EXAMINATION (Cont'd.) 7 BY MR. PETERS: 8 Q. He didn't come to mind prior to the 9 break, he's just coming to mind now after a cup 10 of coffee? 11 A. Yes. I mean, it should have come 12 into mind, obviously. 13 Q. What was his role with Citibank in 14 terms of card marketing? 15 A. I don't recall exactly what he was 16 doing, but he was involved, as he tells the 17 story, when they first initiated their card 18 program, reward card. 19 Q. Was this a card used to track 20 purchasing habits so that loyalty programs could 21 be established? 22 A. That's my understanding, yes.</p>	<p style="text-align: right;">Page 48</p> <p>1 A. Yes. 2 Q. Did you and Mr. Mixson discuss how to 3 sell CCMI's products apart from the products you 4 were trying to collectively develop for the 5 IGroup? 6 A. Yes. My recollection is, we were 7 trying to make money for each of the individual 8 products that we had at the time. 9 Q. I take it you and Mr. Mixson and your 10 families are friendly? 11 A. Yes. 12 Q. You mentioned you vacation together. 13 So you spent a lot of time together? 14 A. Yes. 15 Q. But prior to the break, he's not 16 someone that came to mind as an expert in card 17 marketing? 18 A. No. The way you're asking the 19 question, I think, it was focused on Ann and Bob 20 and then people who would be reporting to me. I 21 wasn't thinking -- 22 Q. As between Mr. Fireman and</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. And therefore, was Mr. Mixson a 2 resource in running SmartSource Direct? 3 A. I believe so, yes. 4 Q. Was he a resource to you -- 5 A. Yes -- 6 Q. -- about SmartSource Direct products 7 and how to market them? 8 A. Again, I worked for Chris at the 9 time, so he was a definite resource. 10 Q. Did you remember consulting with 11 Mr. Mixson to try to evaluate the best way to 12 sell CCMI's products and services? 13 A. Yes. 14 Q. How frequently did you do that? 15 A. It was during that year-and-a-half, 16 constant, you know, we would take the train in 17 the morning together, come home together, travel 18 together. Unfortunately vacation together. So 19 it was a large part of our discussion, was 20 talking about the, how we were going to try to 21 get the entity up and running. 22 Q. And the entity is the IGroup?</p>	<p style="text-align: right;">Page 49</p> <p>1 Mr. Mixson, who would you rank first in knowledge 2 about card distribution and card marketing? 3 A. I never thought about ranking them 4 prior to this -- this minute. So -- in my mind, 5 probably equal. I really don't know. 6 Q. That's -- 7 A. I think their experiences are a 8 little different, but -- 9 Q. How were they different? What did 10 Citibank do that CCMI didn't, and vice versa? 11 A. Again, I think you'd have to talk to 12 an expert about that, you know. I don't know -- 13 Q. Well -- 14 A. -- exactly. 15 Q. -- well, you told me that you were an 16 expert after the end of a year-and-a-half, or at 17 least you had developed some expertise, is that 18 correct? 19 A. Yes, I think that is true. 20 Q. So relying on those expertise, can 21 you recall back and tell me what Citibank did 22 that CCMI did and vice-versa if you have a</p>

13 (Pages 46 to 49)

Garofalo, Martin

July 17, 2007

New York, NY

<p style="text-align: right;">Page 50</p> <p>1 memory?</p> <p>2 A. Again, my recollection is that I</p> <p>3 don't have any knowledge of, you know, I have</p> <p>4 broad knowledge but no specific knowledge about</p> <p>5 the card program but, you know, I --</p> <p>6 Q. The card program at Citibank, you</p> <p>7 mean?</p> <p>8 A. Yes.</p> <p>9 Q. So you didn't, you and Mr. Mixson</p> <p>10 didn't talk about what he had done for Citibank</p> <p>11 so that you could draw on his experience?</p> <p>12 A. No, we did talk about it. But again,</p> <p>13 my recall in specifics on that, I wouldn't be</p> <p>14 able to recall that.</p> <p>15 Q. But your understanding is that</p> <p>16 Citibank developed a program where they tracked</p> <p>17 purchase behavior?</p> <p>18 A. Yes.</p> <p>19 Q. And then did direct targeted</p> <p>20 marketing, is that correct?</p> <p>21 A. Reward programs, yes.</p> <p>22 Q. And Mr. Mixson was someone who had</p>	<p style="text-align: right;">Page 52</p> <p>1 instance?</p> <p>2 A. I know we were trying to expand it.</p> <p>3 So I think it was -- it was not as robust as it</p> <p>4 could have been.</p> <p>5 Q. Well, was anything ever -- I mean,</p> <p>6 your goal was to improve, right?</p> <p>7 A. That is exactly right.</p> <p>8 Q. When you acquired, or News America</p> <p>9 Marketing acquired the company, it understood,</p> <p>10 you understood that CCMI had data management</p> <p>11 capability.</p> <p>12 A. Yes.</p> <p>13 Q. And that they had been selling that</p> <p>14 capability in the marketplace.</p> <p>15 A. Yes.</p> <p>16 MR. KATZ: Objection.</p> <p>17 Q. And you evaluated CCMI's customer</p> <p>18 base for that service, correct?</p> <p>19 A. As an organization, yes.</p> <p>20 Q. And your goal, as the EVP of sales,</p> <p>21 among others, was to, you will tell me, maintain</p> <p>22 that customer base?</p>
<p style="text-align: right;">Page 51</p> <p>1 worked on that program?</p> <p>2 A. Yes.</p> <p>3 Q. But you don't recall specifically</p> <p>4 what his role was?</p> <p>5 A. Again, my recollection, he was the</p> <p>6 head sales guy for that.</p> <p>7 Q. We were talking about CCMI's</p> <p>8 products. We had been through card distribution,</p> <p>9 using your categories now. The second category</p> <p>10 you gave me, data management, what did you mean</p> <p>11 by data management? What did CCMI do to manage</p> <p>12 data?</p> <p>13 A. After the purchases were made by a</p> <p>14 consumer, then they'd have a repository of that</p> <p>15 information and then would be able to target back</p> <p>16 information about those individuals who made</p> <p>17 those purchases.</p> <p>18 Q. And CCMI had that capability?</p> <p>19 A. It -- my understanding was yes, they</p> <p>20 did.</p> <p>21 Q. Did you look into what that</p> <p>22 capability involved? How robust it was, for</p>	<p style="text-align: right;">Page 53</p> <p>1 A. And try to expand it, I believe.</p> <p>2 Q. So therefore you have to know about</p> <p>3 CCMI's data management capabilities with some</p> <p>4 precision in order to market, correct?</p> <p>5 A. Yes.</p> <p>6 Q. What did you do to learn about that?</p> <p>7 A. Again, constant discussion with the</p> <p>8 team. Mostly Henry, and obviously had meetings</p> <p>9 with Bob at the time as well. And then in</p> <p>10 talking to clients in terms of what their needs</p> <p>11 were. Most of the grocery entities.</p> <p>12 Q. Was CCMI's system a legacy system?</p> <p>13 MR. KATZ: Objection.</p> <p>14 A. Meaning what?</p> <p>15 Q. In other words, was it an</p> <p>16 off-the-shelf product? Their application used to</p> <p>17 manage data, was it an off-the-shelf product?</p> <p>18 A. I really don't know that.</p> <p>19 Q. Do you know the name of the product</p> <p>20 that was used to manage data?</p> <p>21 A. I'd be speculating. I may know it.</p> <p>22 MR. KATZ: If you don't remember it,</p>

14 (Pages 50 to 53)

Garofalo, Martin

July 17, 2007

New York, NY

Page 54	Page 56
<p>1 it's perfectly fine to say that.</p> <p>2 A. Okay, sorry.</p> <p>3 Q. Well, I'll save your lawyer, you</p> <p>4 know, all sorts of time making his statement. I</p> <p>5 don't want you to speculate. I want you to tell</p> <p>6 me what you know.</p> <p>7 A. Yeah.</p> <p>8 Q. That's the oath.</p> <p>9 A. Okay. Yes.</p> <p>10 Q. You're under oath and --</p> <p>11 A. Yeah. Okay. No, I --</p> <p>12 Q. The truth is what you know.</p> <p>13 A. I appreciate that, thank you.</p> <p>14 Q. So he doesn't have to tell you that.</p> <p>15 I just did.</p> <p>16 A. Okay.</p> <p>17 Q. You don't remember the name of the</p> <p>18 system used or the application used to manage</p> <p>19 data?</p> <p>20 A. No.</p> <p>21 Q. Do you remember what you did to learn</p> <p>22 about the application used to manage data?</p>	<p>1 with me that in order to sell it, you need to</p> <p>2 understand what the capabilities are.</p> <p>3 A. Yes.</p> <p>4 Q. And so my question to you is, how</p> <p>5 much time did you take to learn the capabilities</p> <p>6 so that you could talk intelligently about the</p> <p>7 product?</p> <p>8 A. I'd say over the year-and-a-half, it</p> <p>9 was constant. I'd be, you know, either talking</p> <p>10 to somebody internally or externally and if I</p> <p>11 needed information, I'd make the call to the</p> <p>12 appropriate person. And sometimes, they would</p> <p>13 come on a call with us.</p> <p>14 Q. Did Bob Fireman have expertise about</p> <p>15 CCMI's data management system?</p> <p>16 MR. KATZ: Objection.</p> <p>17 A. I believe he did.</p> <p>18 Q. Did Ann Raider?</p> <p>19 MR. KATZ: Objection.</p> <p>20 A. I think less so.</p> <p>21 Q. But as between them, Bob Fireman had</p> <p>22 more knowledge about CCMI's data management</p>
Page 55	Page 57
<p>1 A. Yeah. As I've described, when we</p> <p>2 first met with the individuals who were running</p> <p>3 the company prior to the purchase, we went in and</p> <p>4 spoke to them and various other people to learn</p> <p>5 about the --</p> <p>6 Q. So you spoke with Ann Raider and Bob</p> <p>7 Fireman?</p> <p>8 A. Yes.</p> <p>9 Q. And did you speak with anyone else?</p> <p>10 I'll give a name. Bill Adam?</p> <p>11 A. Yes. And we did speak to Bill as</p> <p>12 well, obviously.</p> <p>13 Q. How much time did it take you to</p> <p>14 learn enough about CCMI's data management</p> <p>15 capabilities so that you were able to effectively</p> <p>16 market it?</p> <p>17 MR. KATZ: Objection.</p> <p>18 A. Again, I think it was ongoing and my</p> <p>19 role was more on the, again, the selling side and</p> <p>20 others in the organization were responsible for,</p> <p>21 you know, continuing to develop that application.</p> <p>22 Q. All right. But again, you'd agree</p>	<p>1 system, is that fair?</p> <p>2 MR. KATZ: Objection.</p> <p>3 A. My belief would be yes.</p> <p>4 Q. Did you consider Mr. Fireman a</p> <p>5 resource to learn about CCMI's data management</p> <p>6 application sufficient to talk productively about</p> <p>7 it in your marketing efforts?</p> <p>8 A. Again, I think that that area, if I</p> <p>9 remember the organizational chart, was mostly</p> <p>10 through Henry. But I did speak to Bob on an</p> <p>11 ongoing basis, yes.</p> <p>12 Q. Would you agree with me that Bob</p> <p>13 Fireman was a necessary resource to learn about</p> <p>14 that application?</p> <p>15 MR. KATZ: Objection.</p> <p>16 Q. And that capability?</p> <p>17 A. I think depending on the</p> <p>18 circumstances and at different times, different</p> <p>19 aspects, yes.</p> <p>20 Q. Well, let me explore the qualifiers.</p> <p>21 You mentioned at different times, Mr. Fireman was</p> <p>22 a necessary resource to learn about the data</p>

15 (Pages 54 to 57)

Garofalo, Martin

July 17, 2007

New York, NY

<p style="text-align: right;">Page 58</p> <p>1 management application and capabilities. 2 What times? 3 A. Especially initially, when we were 4 just acquiring -- we had acquired the company. 5 In fact, well, I should say, when my involvement 6 started, there was a lot of time being spent and 7 we would go to Bob for the -- for the answers on, 8 you know, what the system does, what we hope it 9 can do, what the application is in the 10 marketplace. 11 Q. Did there ever come a time when Bob 12 Fireman was, in your opinion, superfluous to your 13 effort to learn about the data management 14 capabilities of CCMI? 15 A. One more time? I'm sorry. 16 Q. Did there come a time when, in your 17 view, when Bob Fireman became superfluous to your 18 necessary effort to learn about CCMI's data 19 management capabilities? 20 A. To me personally? 21 Q. To you personally. 22 MR. KATZ: Objection.</p>	<p style="text-align: right;">Page 60</p> <p>1 A. I think for the last, and again, I 2 don't have specific dates, the last year or so of 3 his involvement with the company, there wasn't a 4 lot of productivity from his area. 5 Q. Well, we'll explore that as we get 6 deeper into the deposition. Back to the issue of 7 data management. 8 Was it your expectation that Henry 9 Lellouche would learn about CCMI's data 10 management capabilities and develop an expertise 11 in that? 12 A. Yes. 13 Q. Did he? 14 A. I believe he did, yes. 15 Q. Was that something you required of 16 him, to become an expert in CCMI's data 17 management capabilities? 18 A. Yeah. I can't -- at that point in 19 time, I can't say that I required it because he 20 didn't report to me. My understanding, he 21 reported to Chris. But I think for the 22 organization to benefit, that was the overall</p>
<p style="text-align: right;">Page 59</p> <p>1 A. I really can't recall. And the 2 reason is, he was in and out over his continuum 3 with the company and I didn't have management 4 responsibilities or -- during different times. 5 So I, you know, to me, though, I would ask Bob 6 questions if I thought he could provide an 7 answer, obviously. 8 Q. Did there come a time when you 9 determined that Bob Fireman was not a valuable 10 resource to News America Marketing? 11 MR. KATZ: In general? 12 MR. PETERS: Yes. 13 A. Yeah, I think toward the end of his 14 employment, I think that was the understanding, 15 yes. 16 Q. That was sometime in 2004? 17 MR. KATZ: Objection. 18 A. Is that the year that he left, 2004? 19 Q. I'm asking you when. Maybe I'll ask 20 in a non-leading way. When did it occur to you 21 that Bob Fireman was no longer, in your view, a 22 valuable resource to the IGroup?</p>	<p style="text-align: right;">Page 61</p> <p>1 belief, yes. 2 Q. And in order to do that, you 3 obviously had to consult with Bob Fireman, 4 correct? 5 MR. KATZ: Objection. 6 A. On certain aspects of the business, 7 yes. 8 Q. Do you have in mind what aspects of 9 the business those would be? 10 A. I think some of the technical things 11 about how the system was running, or he would go 12 to Bill or he would go to Chris, you know, those 13 guys, to try to further his knowledge, yes. 14 Q. Did you ever do any investigation 15 into the market for CCMI's products and services? 16 A. No, not specifically that I can 17 recall. 18 Q. No market research, for example? 19 A. Not that I can recall. 20 Q. Did you see any reports, for example, 21 a study done by Coca-Cola in customer 22 relationship marketing? Did you ever see that or</p>

16 (Pages 58 to 61)

Garofalo, Martin

July 17, 2007

New York, NY

<p style="text-align: right;">Page 62</p> <p>1 any like data?</p> <p>2 A. I don't -- I don't recall.</p> <p>3 Q. Did you task anyone with the job of</p> <p>4 looking into the scope, size and nature of the</p> <p>5 market for the products that CCMI had available</p> <p>6 for sale?</p> <p>7 A. Not specifically that I can recall.</p> <p>8 Q. Do you remember anything in that</p> <p>9 regard, doing anything like that?</p> <p>10 MR. KATZ: Objection.</p> <p>11 A. I remember doing a lot of of reading</p> <p>12 at the time trying to, you know, learn more about</p> <p>13 the business myself, obviously. And we had a</p> <p>14 couple of competitors and we were looking at</p> <p>15 their business as well.</p> <p>16 Q. Catalina?</p> <p>17 A. Catalina is one that I was thinking</p> <p>18 of, yes.</p> <p>19 Q. And what have you reviewed in terms</p> <p>20 of Catalina's business, just to sort of inform of</p> <p>21 you what the market was?</p> <p>22 A. Yeah, again, just -- I don't recall</p>	<p style="text-align: right;">Page 64</p> <p>1 A. I believe so, yes.</p> <p>2 Q. Like gift cards and other types of</p> <p>3 stored value.</p> <p>4 A. Yes.</p> <p>5 Q. Was that something that CCMI had the</p> <p>6 capability to deliver?</p> <p>7 MR. KATZ: Objection.</p> <p>8 A. I believe we were trying to develop</p> <p>9 that, yes.</p> <p>10 Q. Did you expect the market for stored</p> <p>11 value to grow when you were an EVP of sales for</p> <p>12 the IGroup?</p> <p>13 A. Again, I can't recall exactly what my</p> <p>14 expectations were then.</p> <p>15 Q. Were there any business plans</p> <p>16 developed by you or people on your team to</p> <p>17 predict the market for loyalty programs?</p> <p>18 A. I -- I can't recall.</p> <p>19 Q. Same question for stored value.</p> <p>20 A. I'm trying to think. Um -- again,</p> <p>21 that would be a different branch reporting to</p> <p>22 Henry. So I can't recall.</p>
<p style="text-align: right;">Page 63</p> <p>1 specifically. I just know that I was looking</p> <p>2 into the information. But I don't recall if it</p> <p>3 was annual reports or publications or Internet</p> <p>4 stuff. I just don't recall.</p> <p>5 Q. Did you do any evaluation of where</p> <p>6 the market was heading?</p> <p>7 MR. KATZ: Objection.</p> <p>8 A. Again, not that I can recall in terms</p> <p>9 of specific numbers of -- metrics we wanted to</p> <p>10 grow to, no.</p> <p>11 Q. Did you have an expectation that the</p> <p>12 market for loyalty programs was going to grow in</p> <p>13 the five years following the acquisition of CCMI?</p> <p>14 MR. KATZ: Did he personally?</p> <p>15 MR. PETERS: Yes.</p> <p>16 A. Again, sitting here now, I can't</p> <p>17 recall. I'm sure at the time I might have had</p> <p>18 expectations, yes.</p> <p>19 Q. Do you recall expecting programs in</p> <p>20 stored value -- let me ask a more basic question.</p> <p>21 Do you understand what stored value is in terms</p> <p>22 of cards?</p>	<p style="text-align: right;">Page 65</p> <p>1 Q. Did you know how big CCMI's market</p> <p>2 was or market share was in card programs at the</p> <p>3 time it was acquired?</p> <p>4 A. I do not.</p> <p>5 Q. Did you ever hear or learn that it</p> <p>6 had at least a thirty percent market share?</p> <p>7 A. I don't recall that number, no.</p> <p>8 Q. Did News America Marketing have any</p> <p>9 expertise in targeted marketing prior to</p> <p>10 acquiring CCMI?</p> <p>11 A. Um -- and the other entities as well?</p> <p>12 No.</p> <p>13 Q. Okay.</p> <p>14 A. The targeting I mentioned -- to be</p> <p>15 more specific, the targeting in an FSI is</p> <p>16 obviously self-targeted, so if you -- but in</p> <p>17 terms of stored value or in terms of loyalty</p> <p>18 cards, that's a whole different type, yes.</p> <p>19 Q. And News America had no experience in</p> <p>20 that area of marketing --</p> <p>21 MR. KATZ: Objection.</p> <p>22 Q. -- at the time it acquired CCMI,</p>

17 (Pages 62 to 65)

Garofalo, Martin

July 17, 2007

New York, NY

<p style="text-align: right;">Page 66</p> <p>1 right?</p> <p>2 A. I'd say again, I wouldn't be able to</p> <p>3 answer that fully in that there's an acquisition</p> <p>4 team that had done that. I know that Chris, as</p> <p>5 we discussed, had a lot of understanding of that</p> <p>6 business, and again, I can't speak to the other</p> <p>7 people who were involved with the team and their</p> <p>8 expertise, but I think that there was a good</p> <p>9 understanding of it from that team, which is why</p> <p>10 they made the purchase, but...</p> <p>11 Q. But that the not something that News</p> <p>12 America Marketing was doing. They weren't, for</p> <p>13 example, doing any loyalty programs using</p> <p>14 information developed at the point of sale.</p> <p>15 A. Yes, you're right.</p> <p>16 Q. And they weren't doing any stored</p> <p>17 value.</p> <p>18 A. That is also right.</p> <p>19 Q. Do you know when the plan to roll</p> <p>20 together these three entities, CCMI, SoftCard and</p> <p>21 Planet U, came about?</p> <p>22 A. Can you just repeat that?</p>	<p style="text-align: right;">Page 68</p> <p>1 before?</p> <p>2 Q. Right.</p> <p>3 A. And I don't recall seeing this. It</p> <p>4 looks familiar.</p> <p>5 Q. Do you recall seeing PowerPoints at</p> <p>6 around the time you started that described CCMI's</p> <p>7 business?</p> <p>8 MR. KATZ: Started at the IGroup?</p> <p>9 MR. PETERS: Yes.</p> <p>10 A. I don't recall seeing a PowerPoint.</p> <p>11 Q. Do you have any present memory of</p> <p>12 what you looked at to --</p> <p>13 A. I don't --</p> <p>14 Q. -- let me just get the question out,</p> <p>15 it's fine. Do you have any present memory of</p> <p>16 what you looked at to inform you about what</p> <p>17 CCMI's products were?</p> <p>18 A. Yeah, I'm thinking back to -- to the</p> <p>19 first recollection I have of when we first met</p> <p>20 with those guys, but I can't remember what the</p> <p>21 presentation format was, if -- you know, I</p> <p>22 don't -- I just don't recall.</p>
<p style="text-align: right;">Page 67</p> <p>1 Q. Sure. The plan to role together</p> <p>2 CCMI, SoftCard and Planet U into the IGroup as it</p> <p>3 was then known, do you know when that came about?</p> <p>4 A. I do not.</p> <p>5 Q. Do you know if it was prior to the</p> <p>6 acquisition?</p> <p>7 A. I don't -- I don't know.</p> <p>8 MR. PETERS: Mark this, please, as</p> <p>9 Exhibit 39.</p> <p>10 (Plaintiff Exhibit (Garofalo) 39,</p> <p>11 presentation entitled, "SmartSource, a</p> <p>12 View of the Future, Two Paces Ahead",</p> <p>13 marked for identification, as of this</p> <p>14 date.)</p> <p>15 Q. Mr. Garofalo, we've marked as</p> <p>16 Exhibit 39 a document that's titled,</p> <p>17 "SmartSource, a View of the Future, Two Paces</p> <p>18 Ahead."</p> <p>19 Have you seen this document before?</p> <p>20 Take a look at it and take your time.</p> <p>21 (Witness perusing document.)</p> <p>22 A. The question is, have you seen this</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. Would you flip to the page that is</p> <p>2 three from the end.</p> <p>3 A. Three from the end, yes.</p> <p>4 Q. It says, "CCMI full Service Database</p> <p>5 Marketing Services"?</p> <p>6 A. Right.</p> <p>7 Q. As you looked at those products and</p> <p>8 services, program implementation, data management</p> <p>9 and data marketing, is that consistent with your</p> <p>10 memory of what CCMI had to offer?</p> <p>11 MR. KATZ: Any particular point in</p> <p>12 time?</p> <p>13 MR. PETERS: During the</p> <p>14 year-and-a-half that he was executive vice</p> <p>15 president of sales for the IGroup.</p> <p>16 A. Yeah, again, this is consistent with</p> <p>17 my recollection, but this looks new to me. I</p> <p>18 don't recall seeing this piece.</p> <p>19 Q. I'm more interested in learning if</p> <p>20 the substance of the document, specifically this</p> <p>21 page, is consistent with what you recall CCMI had</p> <p>22 for products and services.</p>

18 (Pages 66 to 69)

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Garofalo, Martin

July 17, 2007

New York, NY

<p style="text-align: right;">Page 70</p> <p>1 A. Yeah, and again, my recall is -- I 2 don't recall seeing this. But, you know, I -- 3 Q. We're talking past each other, and 4 I'm going to take the blame. I know you don't 5 recall seeing this. I'm not asking that. 6 A. Okay. 7 Q. I'm asking you to look at it now as 8 though it was given to you to for the first time 9 ever, and read it and tell me if the information 10 contained on this page reflects or is consistent 11 with your memory of CCMI's business during the 12 time you were the EVP of sales for the IGroup. 13 A. Okay. All right, thank you. 14 (Witness perusing document.) 15 A. Yeah, I think portions of this, yes. 16 And other parts, I don't remember as well. 17 Q. I'm going to tick them off on mine. 18 Tell me what you recall that CCMI had to offer in 19 items of products and services. Go down the 20 boxes. 21 A. Sure. Under the program 22 implementation, the application processing, I</p>	<p style="text-align: right;">Page 72</p> <p>1 although you don't doubt that CCMI had them, you 2 don't -- you can't speak to them. You don't know 3 about them. 4 A. Right. I'd have a hard time 5 explaining them. Fulfillment, for instance. I 6 could speculate but I wouldn't know what that 7 would -- as I sit here today, I can't recall 8 that. 9 Q. Are there products and services that 10 CCMI had to offer that you know of that are not 11 reflected on this page of Exhibit 39? 12 A. No. 13 Q. Can you tell me whether there are 14 aspects of the business perhaps reflected on this 15 page of Exhibit 39 that News America Marketing 16 decided to abandon? 17 A. At what point in time? 18 Q. Well, during your year-and-a-half as 19 the EVP. We'll start there. 20 A. Um -- I think right -- oh, just that 21 time period? Did we decide to abandon? Of the 22 ones, again, that I can recall, no.</p>
<p style="text-align: right;">Page 71</p> <p>1 remember that's something that we did. Card 2 design and issuance production is something that 3 we, you know, sourced for our clients and 4 certainly, replenishment. The software licensing 5 doesn't ring a bell. The data warehousing does. 6 The data warehousing outsourcing, I'm not 7 familiar with that, you know, as I sit here. And 8 the data marketing. The retail promotion 9 programs rings a bell. And that would be it. 10 But in general, it's an 11 understanding, yes, that this is -- this is what 12 the opportunity was. 13 Q. So the page that we're looking at now 14 on Exhibit 39, you have to reason to doubt that 15 this reflects the products and services that CCMI 16 had available at the time News America Marketing 17 acquired it; is that correct? 18 A. That is correct. 19 Q. But of the twelve listed, you have a 20 memory of four of them, or five of them. 21 A. Yes. Specifically, yes. 22 Q. So the other products and services,</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. At any point, did News America 2 Marketing decide to abandon any of the services 3 and products that CCMI had available for sale? 4 MR. KATZ: Objection. 5 A. I'd say yes. 6 Q. Which ones? 7 A. Well, we still do some, on a periodic 8 basis, card fulfillment. But over the course of 9 time, again, my understanding is that there could 10 be retailers who use the cards, source them 11 themselves, and the data hosting, the same thing, 12 kind of went the same way, that the retailers 13 much -- did not want to outsource their 14 databases. 15 So I think over time, you know, we've 16 pulled away from these programs. 17 Q. Which ones, the five that you listed? 18 A. What were the -- the application 19 process -- yeah, I don't think we do any of this 20 right now. 21 Q. You don't -- 22 MR. KATZ: You have to identify what</p>

19 (Pages 70 to 73)

Garofalo, Martin

July 17, 2007

New York, NY

Page 74	Page 76
<p>1 you're pointing to.</p> <p>2 A. I'm sorry, the application process, I</p> <p>3 don't think we're doing any of that right now, to</p> <p>4 my knowledge.</p> <p>5 Q. Let me stop you there. We'll go</p> <p>6 through them one at a time.</p> <p>7 A. Okay.</p> <p>8 Q. The application processing was</p> <p>9 something that was done during your tenure with</p> <p>10 the IGroup?</p> <p>11 A. Yes.</p> <p>12 Q. But that has since been abandoned?</p> <p>13 MR. KATZ: If you know.</p> <p>14 A. I believe it has been, yes.</p> <p>15 Q. And can you tell me when?</p> <p>16 A. I don't -- I don't -- I can't recall</p> <p>17 any specific dates on that.</p> <p>18 Q. Can you tell me why, if you know?</p> <p>19 A. I just don't think there was any</p> <p>20 business coming to us from that opportunity any</p> <p>21 longer.</p> <p>22 Q. Is it something that you marketed</p>	<p>1 Direct, is my understanding, over the time that</p> <p>2 we had the group formed.</p> <p>3 Q. You recall that he was the general</p> <p>4 manager of SmartSource Direct?</p> <p>5 A. Now that you've said those words,</p> <p>6 I -- he was the business leader of that group,</p> <p>7 yes.</p> <p>8 Q. And when he became the general</p> <p>9 manager of SmartSource Direct, did he have any</p> <p>10 experience in application processing?</p> <p>11 A. Again, I don't know for sure if he</p> <p>12 did or didn't.</p> <p>13 Q. And then Henry reported to you as the</p> <p>14 head of the IGroup, I take it?</p> <p>15 A. He reported to Chris directly.</p> <p>16 Q. To Chris, directly?</p> <p>17 A. He reported to Chris, I think for</p> <p>18 that entire time period, yes.</p> <p>19 Q. Card designing, production and</p> <p>20 issuance, that's --</p> <p>21 A. Yes.</p> <p>22 Q. -- a program that CCMI sold but that</p>
Page 75	Page 77
<p>1 during your year-and-a-half at the IGroup?</p> <p>2 A. Yes.</p> <p>3 Q. Who had expertise in application</p> <p>4 processing on your -- in other words, who was an</p> <p>5 available resource from a personnel perspective?</p> <p>6 A. My understanding that I would go to</p> <p>7 Henry on that. Henry would be the person if I</p> <p>8 had a question on it.</p> <p>9 Q. Did Henry have a background in</p> <p>10 application processing?</p> <p>11 A. Um --</p> <p>12 MR. KATZ: At what point in time?</p> <p>13 A. Yeah -- um -- that was a good</p> <p>14 question.</p> <p>15 Q. Did Henry have a background in</p> <p>16 application processing when he took over as head</p> <p>17 of the -- let's get some context here for your</p> <p>18 benefit and for mine.</p> <p>19 A. Okay.</p> <p>20 Q. What was Henry's position within the</p> <p>21 IGroup?</p> <p>22 A. He was the head of SmartSource</p>	<p>1 News America Marketing no longer sells; is that</p> <p>2 correct?</p> <p>3 A. Um -- I think between these two,</p> <p>4 which is replenishment and card design, we do on</p> <p>5 a very sporadic basis. I don't believe we're</p> <p>6 selling it, and again Henry would know.</p> <p>7 Q. Do you know why?</p> <p>8 A. Again, I don't think we were able to</p> <p>9 generate sales in that area. The retailers</p> <p>10 themselves were sourcing the cards for a better</p> <p>11 price than we could offer it. That's my</p> <p>12 understanding.</p> <p>13 Q. Were you involved in the decision to</p> <p>14 abandon those lines?</p> <p>15 A. I think -- yes, I think I was.</p> <p>16 Q. What was your role?</p> <p>17 A. I think, again, my recollection is,</p> <p>18 over a period of time, Henry came in and said,</p> <p>19 "You know, we're not able to make money in this</p> <p>20 area," and a decision was made to focus on</p> <p>21 this -- the other areas of this opportunity that</p> <p>22 we could make money on.</p>

20 (Pages 74 to 77)

Garofalo, Martin

July 17, 2007

New York, NY

<p style="text-align: right;">Page 78</p> <p>1 Q. What areas?</p> <p>2 A. Using the card information from the</p> <p>3 retailers to do direct-mail programs.</p> <p>4 Q. Where does that appear on our</p> <p>5 Exhibit 39?</p> <p>6 A. Okay. I guess it would be right here</p> <p>7 (indicating).</p> <p>8 MR. KATZ: You have to identify --</p> <p>9 A. I'm sorry, "Retailer promotion</p> <p>10 programs."</p> <p>11 Q. Well, we'll get to that, thank you,</p> <p>12 we'll get to that in a moment.</p> <p>13 So when did News America Marketing</p> <p>14 abandon card design, production and issuance and</p> <p>15 replenishment?</p> <p>16 A. I really don't recall. It was over a</p> <p>17 continuing time of trying to sell it. I believe</p> <p>18 for the time we were talking about, the 18 months</p> <p>19 we were actively selling that.</p> <p>20 Q. So in order to sell it, you had to</p> <p>21 learn about the businesses, right?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 80</p> <p>1 News America Marketing currently do data</p> <p>2 warehouse design?</p> <p>3 A. No. Not...</p> <p>4 Q. When did News America Marketing</p> <p>5 abandon data warehouse design?</p> <p>6 A. Again, I don't recall exactly when</p> <p>7 there was a decision to exit that business.</p> <p>8 Q. Was it during your 18-month tenure?</p> <p>9 A. I don't believe so, no.</p> <p>10 Q. Were you involved in a decision to</p> <p>11 abandon data warehouse design?</p> <p>12 A. I don't recall during those 18 months</p> <p>13 being involved with abandoning anything. That's</p> <p>14 my recollection.</p> <p>15 Q. So to sell it, you had to learn about</p> <p>16 it?</p> <p>17 A. Um -- to an extent, yes.</p> <p>18 Q. And to learn about it, you had to</p> <p>19 deal with Bob Fireman?</p> <p>20 MR. KATZ: Objection.</p> <p>21 A. Again, my -- again, my position</p> <p>22 within the organization is, I would probably go</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. And you learned about the businesses</p> <p>2 from Henry Lellouche?</p> <p>3 MR. KATZ: Objection.</p> <p>4 A. I think the whole group was kind of</p> <p>5 learning together, you know, and -- yeah.</p> <p>6 Q. And Ann Raider and Bob Fireman were</p> <p>7 indispensable assets in learning the business</p> <p>8 sufficiently to sell the products, correct?</p> <p>9 MR. KATZ: Objection.</p> <p>10 A. Again, they were sources but not the</p> <p>11 only sources for that.</p> <p>12 Q. Sources that couldn't be ignored.</p> <p>13 Sources that you had to pay attention to in order</p> <p>14 to learn CCMI's business, correct?</p> <p>15 MR. KATZ: Objection.</p> <p>16 A. Well, I think especially early on,</p> <p>17 that's the way we set it up, yes. I mean --</p> <p>18 that's not the way we set it up. That was the</p> <p>19 understanding, we would go and get information</p> <p>20 from those two.</p> <p>21 Q. Data warehousing and design is one of</p> <p>22 the areas that you recall CCMI selling. Does</p>	<p style="text-align: right;">Page 81</p> <p>1 to my boss, Chris, and to Henry, who is the head</p> <p>2 of the group, and also to Bob and Ann at</p> <p>3 different points in time. And again, I can't</p> <p>4 recall who I went to at which -- what particular</p> <p>5 time.</p> <p>6 Q. I'll take the point. So --</p> <p>7 A. Yeah.</p> <p>8 Q. -- Henry, for example, or</p> <p>9 Mr. Lellouche, he would also provide you with</p> <p>10 insight on data warehousing design, right?</p> <p>11 A. Yes. Over the -- over the course of</p> <p>12 the 18 months, yes.</p> <p>13 Q. Sure. And he learned about it, as</p> <p>14 best you know, from what sources?</p> <p>15 MR. KATZ: Objection.</p> <p>16 A. Again, I don't know exactly --</p> <p>17 sorry -- his -- I don't know exactly his</p> <p>18 background, now that I think of it. But the --</p> <p>19 the team would be Ann and Bob and then there's</p> <p>20 others, Bill Adams and others, and he would go to</p> <p>21 that group in consultation with Chris, his boss,</p> <p>22 as well. And then I would go to them and get</p>

21 (Pages 78 to 81)

Garofalo, Martin

July 17, 2007

New York, NY

<p style="text-align: right;">Page 82</p> <p>1 answers. But Henry would be the person that I 2 would speak to more often than not. 3 But other times, I would talk to 4 Bill. And again, I have no specific recall of 5 talking to Bill, but I know I did, you know. 6 Q. In any event, it was your expectation 7 that, in order to have the team learn 8 sufficiently about data warehouse design to sell 9 that service, the team would have to have an 10 information download, would have to get 11 information, in other words, from Bob Fireman and 12 Ann Raider. 13 MR. KATZ: Objection. 14 A. And Bill. And again, the way I'm 15 looking at it is, if we were able to develop a 16 sales lead, and the sales for this particular 17 part of the equation reported to Henry, but there 18 was people on that staff, and I think it was Bill 19 and -- and Bob at different times, would actually 20 meet with the clients as well. So is that 21 answering your question? 22 Q. In a general way it is. I'll maybe</p>	<p style="text-align: right;">Page 84</p> <p>1 A. Yes. 2 MR. KATZ: Objection. 3 A. I think that's true. 4 Q. Okay. And in order to sell retail 5 promotion programs -- you want to correct 6 something or -- 7 A. Well, you know, there's individuals 8 that were on staff that reported to -- I'm trying 9 to think of at what point in time; and at this 10 point in time they didn't report to me but they 11 were in -- they were on -- on the payroll, and 12 that was the retail group that was in-house. 13 So we had several people that came 14 from the retailers themselves, two in particular, 15 that would be very well versed in retailer 16 promotional programs because they ran retail 17 stores themselves. 18 So I -- so they -- there was some 19 understanding and expertise in the company. But 20 as you -- it's... 21 Q. Okay. And were those people brought 22 on to the team to, you know, impart their wisdom</p>
<p style="text-align: right;">Page 83</p> <p>1 put a finer point on it. 2 A. Okay. 3 Q. You really could not learn -- when I 4 say "you" I mean the IGroup -- could not learn 5 everything it needed to learn in order to 6 effectively sell data warehouse design unless it 7 relied on Bob Fireman's knowledge of that segment 8 of CCMI's business; is that correct? 9 MR. KATZ: Objection. 10 A. As it pertained specifically to Bob's 11 knowledge of CCMI, and what they could do at the 12 time we acquired them, I'd say yes. Other people 13 had, you know, like we talked about, had 14 knowledge, you know, in -- in the -- in the 15 group. 16 Q. I have the same question about retail 17 promotion programs. 18 A. Yeah. 19 Q. The baseline is this: 20 At the time CCMI was acquired, News 21 America Marketing had no in-house expertise in 22 retail promotion programs; correct?</p>	<p style="text-align: right;">Page 85</p> <p>1 and knowledge about retail promotion programs? 2 A. Later they were, yes. 3 Q. When? 4 A. Um -- I'm trying to think if it was 5 during this 18 months, and then I exited the 6 business, and other people ran it and I came back 7 in later. But I don't recall when they were 8 brought on board to help out. 9 Q. Was it right away? 10 A. I really can't recall. 11 Q. And these people, did they have 12 expertise in developing retailer promotion 13 programs using information developed at the point 14 of sale? 15 MR. KATZ: Objection. 16 A. Yeah, again, I don't know exactly. I 17 know what type of programs they were involved 18 with. I don't know if exactly it falls into the 19 way you stated it. 20 Q. Who are these people? 21 A. Pat Kroc and Ed Wogan are two that I 22 can think of.</p>

22 (Pages 82 to 85)

Garofalo, Martin

July 17, 2007

New York, NY

<p style="text-align: right;">Page 86</p> <p>1 Q. Can you give me a general way their 2 general experience level in retail promotion 3 programs so I can understand it in context? 4 A. Yeah, and again, my understanding is 5 that Pat, he ran several stores for Super Value, 6 so anything that went on in the store, he would 7 be responsible for. And Ed is very similar 8 background. I just don't think it was as large a 9 store group, but he owned a couple of stores 10 themselves and would be, they used to talk about 11 loyalty programs from time to time. 12 Q. But you don't have any specific 13 memory of their contribution to the IGroup, do 14 you? 15 A. No. No. 16 Q. Let's -- 17 A. Not at this point. That -- as I 18 recall. 19 Q. Let's go back to just discussing 20 retail program promotion. This is an area of the 21 business, CCMI's business, that News America 22 Marketing is still involved in?</p>	<p style="text-align: right;">Page 88</p> <p>1 approach the client for either a new product and 2 they would wish to get the top ten percent of 3 coffee drinkers, and they have a certain budget 4 and they have a certain target, and then we 5 approach the retailers and get the names and then 6 fulfill that mailing for them. 7 Q. So this is information that is kept 8 by retailers? 9 A. Yes. 10 Q. It's not your own database? 11 A. No. 12 Q. You don't have any database anymore 13 of information generated at the point of sale? 14 A. Not to my knowledge, no. 15 MR. KATZ: Kevin, can we take a 16 break? I think it's unrelated to this. 17 MR. PETERS: Sure. 18 (Recess taken.) 19 EXAMINATION (Cont'd.) 20 BY MR. PETERS: 21 Q. Prior to the break, we were 22 discussing retailer promotion programs. The</p>
<p style="text-align: right;">Page 87</p> <p>1 MR. KATZ: I'm sorry, what are you 2 pointing to, Kevin? 3 MR. PETERS: Retail promotion 4 programs. 5 A. Are we still doing this today? 6 Q. Yes. 7 A. Yes. In -- it's kind of like in 8 combination with the manufacturers as well, if 9 I'm viewing this the right way. 10 Q. Well, tell me what News America 11 Marketing does in retail promotion programs today 12 that relies on information generated at the point 13 of sale. 14 A. We have a business that approaches 15 the retailers and gets the name -- the names from 16 them of certain people, or not actually the 17 names, but the identifiers of these people that, 18 based on their shopping history, will remarket on 19 behalf of, typically, the packaged goods 20 community. 21 Q. How does that work? 22 A. A client will come to us or we'll</p>	<p style="text-align: right;">Page 89</p> <p>1 retailer promotion programs that are referenced 2 in this Exhibit 39, as best you know, involved 3 developing programs using information generated 4 at the point of sale; correct? 5 A. Yes. 6 Q. And it's information that was 7 collected based on the cards that were produced 8 and sold by CCMI? 9 MR. KATZ: Objection. 10 A. Yes. 11 Q. All right. And that, at least, the 12 contemplation -- 13 MR. KATZ: What point in time are we 14 talking about? 15 MR. PETERS: Well, Exhibit 39 I can 16 represent to you was generated August of 17 1999. 18 MR. KATZ: That I understand, but 19 talking about a brand promotion program -- 20 MR. PETERS: I'm not talking about 21 brand promotion programs. He doesn't know 22 what that is.</p>

23 (Pages 86 to 89)

Garofalo, Martin

July 17, 2007

New York, NY

<p style="text-align: right;">Page 90</p> <p>1 MR. KATZ: Retail promotion program, 2 are you talking about a retail promotion 3 program at any particular point in time? 4 MR. PETERS: Talking about the 18 5 months that he was executive vice 6 president of the IGroup. 7 MR. KATZ: So these are retail 8 promotion programs during that period. 9 MR. PETERS: Right. 10 MR. KATZ: Okay. 11 Q. In your understanding of what retail 12 promotion programs were at the time, you 13 understood that retail promotion programs 14 contemplated were retail promotion programs using 15 information generated at the point of sale. 16 A. Yes. 17 Q. And information collected using cards 18 designed and produced by CCMI. 19 MR. KATZ: Objection. 20 Q. Right? 21 A. As relates to this sheet of paper, 22 yes.</p>	<p style="text-align: right;">Page 92</p> <p>1 MR. KATZ: You've answered the 2 question. 3 THE WITNESS: Okay. 4 Q. Well, I'll tell you, and you can take 5 my word for it if you choose, that this document 6 was generated in August of 1999, which is just 7 shortly after the -- in fact, it was a couple of 8 days before the acquisition was finalized. 9 A. Okay. 10 Q. And as you look at this and based on 11 your experience, can you tell me whether or not 12 you think this represents a combination of 13 existing products and services and contemplated 14 products and services, or existing products and 15 services? 16 A. I really don't know. 17 Q. What did you do to try to learn about 18 what CCMI had to offer? I'm curious as to why 19 you don't know about the products and services 20 that are on this list. 21 A. Well, I think there was a lot of 22 development going on and trying to develop a</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. So, but News America Marketing now 2 does not collect that data. It goes directly to 3 the retailers, that information? 4 MR. KATZ: Objection. 5 A. Yes, I think that's true. 6 Q. When did it abandon the effort to 7 collect that information, warehouse it and use it 8 to develop retail promotion programs? 9 MR. KATZ: Objection. 10 A. I -- I don't -- I'm not aware. 11 Q. You don't know when? 12 A. No, I don't know when. 13 Q. Okay. The other products and 14 services that we have listed on Exhibit 39 that 15 you don't have knowledge of, you don't doubt that 16 CCMI had those products and services, do you? 17 A. I'm not sure -- I could agree we were 18 trying to develop a lot of stuff in conjunction 19 with the acquisition so I'm not sure exactly what 20 these mean and I'm not sure exactly what we had. 21 Hang on a second. 22 (Witness perusing document.)</p>	<p style="text-align: right;">Page 93</p> <p>1 database engine and again, I'm having trouble 2 recalling what was there and what was being 3 developed. 4 Q. The software licensing, let's just 5 take that for instance. You understood that CCMI 6 had proprietary software that it licensed to 7 retailers? 8 A. Again, I don't have any recall of 9 that now. 10 Q. Do you remember trying to learn what 11 CCMI had to offer in terms of selling software 12 licensing at any time? 13 MR. KATZ: Objection. I mean, I 14 think the witness has answered that he 15 doesn't recall. I mean, I don't know what 16 more you can ask him. 17 MR. PETERS: Well, I know he doesn't 18 know about it. I'm wondering whether or 19 not, you know, he ever tried to learn. 20 MR. KATZ: Well, I think he's told 21 you he doesn't recall. 22 Q. Is that, is what you're lawyer's</p>

24 (Pages 90 to 93)

Garofalo, Martin

July 17, 2007

New York, NY

<p style="text-align: right;">Page 94</p> <p>1 saying true?</p> <p>2 A. Yeah. I'm trying to recall and I</p> <p>3 don't know, again, looking back at the situation,</p> <p>4 I don't recall.</p> <p>5 Q. Were you the EVP of sales for the</p> <p>6 IGroup when the Furrs test was undertaken?</p> <p>7 A. I believe yes.</p> <p>8 Q. And following the failure of that</p> <p>9 test, how did that impact the running of the</p> <p>10 IGroup? In other words, what impact did that</p> <p>11 have on the IGroup?</p> <p>12 A. I don't recall if it had any impact.</p> <p>13 Q. In other words, was there any effort</p> <p>14 to regroup and try to evaluate the viability of</p> <p>15 the business model you were pursuing?</p> <p>16 A. I can't recall.</p> <p>17 Q. Was there any discussion among your</p> <p>18 group about refocusing the energies and efforts</p> <p>19 of the group to more productive and profitable</p> <p>20 offerings?</p> <p>21 A. I don't recall anything specifically</p> <p>22 at that time regarding the --</p>	<p style="text-align: right;">Page 96</p> <p>1 I'm asking. The plan to combine SmartSource.com</p> <p>2 and SoftCard, it didn't pan out.</p> <p>3 A. Yes.</p> <p>4 Q. And when that concept didn't pan out,</p> <p>5 did that have any impact on the IGroup?</p> <p>6 A. Not that I can recall.</p> <p>7 Q. Was the IGroup disbanded at any</p> <p>8 point?</p> <p>9 MR. KATZ: During his tenure?</p> <p>10 MR. PETERS: No. At any point.</p> <p>11 A. Um -- the -- the IGroup entity, it</p> <p>12 was -- the group that I referred to as the</p> <p>13 IGroup, that -- so was it ever disbanded at any</p> <p>14 time? And I'd say that the individual pieces</p> <p>15 that we thought we could make business from or</p> <p>16 make money from, it was never disbanded. But</p> <p>17 think there was always some type of continuity.</p> <p>18 Q. So the IGroup still exists?</p> <p>19 A. Yes.</p> <p>20 Q. And the three entities that we've</p> <p>21 mentioned, SmartSource Direct, SmartSource.com,</p> <p>22 and SoftCard, are they still entities within the</p>
<p style="text-align: right;">Page 95</p> <p>1 Q. Did the failure of SoftCard impact</p> <p>2 CCMi in any way that you can articulate for me?</p> <p>3 A. Not that I can recall. Not that I</p> <p>4 can remember.</p> <p>5 Q. Did the failure of -- let me not put</p> <p>6 a word on it just yet. Was SmartSource.com</p> <p>7 successful?</p> <p>8 A. Guess you have to define what</p> <p>9 success --</p> <p>10 Q. What was the plan for it?</p> <p>11 A. Again, I don't know -- I think we</p> <p>12 were trying to evaluate what the plan was for.</p> <p>13 It's making -- it's making money now. So I</p> <p>14 guess -- I think it was successful.</p> <p>15 Q. The original intention was to roll</p> <p>16 SmartSource.com and Planet U together, correct?</p> <p>17 A. I think that was a vision that we</p> <p>18 were going to see if it would work.</p> <p>19 Q. And it didn't work.</p> <p>20 A. Well, we never combined everything.</p> <p>21 We couldn't get that to function.</p> <p>22 Q. That's what I'm saying. That's what</p>	<p style="text-align: right;">Page 97</p> <p>1 IGroup?</p> <p>2 A. I would say with the exception of</p> <p>3 SoftCard.</p> <p>4 Q. So it's just the two?</p> <p>5 A. Yes.</p> <p>6 Q. And the funding for the IGroup, was</p> <p>7 it ever impacted or affected by the lack of</p> <p>8 success in putting together these three companies</p> <p>9 into some type of program or model?</p> <p>10 A. The funding, meaning the --</p> <p>11 meaning --</p> <p>12 MR. KATZ: Objection.</p> <p>13 Q. Well, in your experience, was News</p> <p>14 America Marketing's willingness to invest in the</p> <p>15 IGroup affected by the failure that the IGroup</p> <p>16 had on the Furrs test?</p> <p>17 A. I don't know.</p> <p>18 Q. Do you know whether or not the</p> <p>19 funding for the IGroup was affected at all by the</p> <p>20 failure of Planet U?</p> <p>21 A. I don't recall anything specific on</p> <p>22 that.</p>

25 (Pages 94 to 97)

Garofalo, Martin

July 17, 2007

New York, NY

Page 98	Page 100
<p>1 Q. Do you recall any impact on the</p> <p>2 willingness to fund the IGroup initiatives and</p> <p>3 companies when SoftCard failed?</p> <p>4 A. I don't have any knowledge that I can</p> <p>5 recall on that.</p> <p>6 Q. Have you ever spoken with anyone at</p> <p>7 News America Marketing about commitments that</p> <p>8 were made to Ann Raider and Bob Fireman prior to</p> <p>9 the sale of their company to News America</p> <p>10 Marketing?</p> <p>11 A. Not that I recall.</p> <p>12 Q. Do you recall any conversations with</p> <p>13 anyone at News America Marketing about the</p> <p>14 resources that News America Marketing committed</p> <p>15 to use prior to acquiring CCMI?</p> <p>16 MR. KATZ: Objection.</p> <p>17 A. Not -- not that I'm -- I don't know</p> <p>18 anything about that.</p> <p>19 Q. Do you know whether there were any</p> <p>20 representations made about the use of a sales</p> <p>21 force prior to the acquisition?</p> <p>22 A. I'm not -- I'm not aware of that.</p>	<p>1 MR. KATZ: Do you have any sort of</p> <p>2 general idea of how long you're going to</p> <p>3 be? 'Cause that may influence, you know,</p> <p>4 how long we want to go before taking a</p> <p>5 lunch break.</p> <p>6 MR. PETERS: I don't. But it will</p> <p>7 be, you know, probably another couple of</p> <p>8 hours anyway.</p> <p>9 THE WITNESS: Okay.</p> <p>10 MR. PETERS: Would you mark this as</p> <p>11 Exhibit 40.</p> <p>12 (Plaintiff Exhibit (Garofalo) 40,</p> <p>13 e-mail dated 3/7/03, Raider to Garofalo,</p> <p>14 marked for identification, as of this</p> <p>15 date.)</p> <p>16 Q. Mr. Garofalo, the exhibit I just put</p> <p>17 before you has a document control number at the</p> <p>18 bottom right-hand side, FR1536. It's an e-mail</p> <p>19 from Ms. Raider to you, subject, personal.</p> <p>20 Would you read this and tell me first</p> <p>21 off if you recall seeing it before today.</p> <p>22 (A pause in the proceedings.)</p>
Page 99	Page 101
<p>1 Q. You have never spoken to anyone about</p> <p>2 that, that you can recall?</p> <p>3 A. No.</p> <p>4 Q. Do you recall ever speaking with Ann</p> <p>5 Raider or Bob Fireman about the commitments News</p> <p>6 America Marketing made prior to acquiring CCMI?</p> <p>7 A. No.</p> <p>8 Q. Did Ann Raider or Bob Fireman</p> <p>9 complain to you about the resources that News</p> <p>10 America Marketing was dedicating to CCMI?</p> <p>11 A. Not -- not specifically, sitting here</p> <p>12 today.</p> <p>13 Q. You don't remember any conversations</p> <p>14 with Ann Raider, for example, complaining about a</p> <p>15 lack of a sales force to market CCMI's products</p> <p>16 and services?</p> <p>17 A. Not that I can recall.</p> <p>18 MR. KATZ: Kevin, I'm assuming you're</p> <p>19 going to go past lunch, so I'm wondering</p> <p>20 how you want to schedule that.</p> <p>21 MR. PETERS: Well, however you want</p> <p>22 to break.</p>	<p>1 A. Okay, I've looked at it.</p> <p>2 Q. Remember it?</p> <p>3 A. I do not.</p> <p>4 Q. This is in March of 2003. Did you</p> <p>5 reenter the SmartSource Direct business at some</p> <p>6 point after leaving the IGroup?</p> <p>7 A. Yes.</p> <p>8 Q. Can you describe that transition?</p> <p>9 A. You said reenter the IGroup --</p> <p>10 Q. Let me ask you what happened rather</p> <p>11 than suggest to you what happened.</p> <p>12 A. Again, my recollection is that the</p> <p>13 IGroup -- Chris and I came back to work in the</p> <p>14 core business and then the IGroup reported to</p> <p>15 Bill Christie. And I went over to run the trades</p> <p>16 out of our business.</p> <p>17 Q. But at some point you had further</p> <p>18 interaction with Ann Raider?</p> <p>19 A. Yes.</p> <p>20 Q. What was the nature of that? How did</p> <p>21 it come about?</p> <p>22 A. I'm trying to recall, I don't know</p>

26 (Pages 98 to 101)

Garofalo, Martin

July 17, 2007

New York, NY

<p style="text-align: right;">Page 102</p> <p>1 specifically what the relationship is here. But 2 she's saying, "Reporting directly to you," and my 3 recollection is, in my going back and trying to 4 remember, it was in relation to my involvement 5 with the retailers. 6 Q. What was your position at the time at 7 the company? 8 A. EVP, trade. The current position I'm 9 in. 10 Q. Why did you leave the IGroup and go 11 back to the core business? 12 A. Again, my recollection is, we were 13 having difficulties on the core business and I 14 was asked to come and head up the area back in 15 the core. 16 Q. Was the sales force reorganized at 17 some point in 2000-2001? 18 MR. KATZ: Which sales force are you 19 talking about? 20 MR. PETERS: The big one. The 250 or 21 so. 22 A. I can't recall specific dates. But I</p>	<p style="text-align: right;">Page 104</p> <p>1 wasn't my domain at the time. 2 Q. So when Ann Raider was writing to you 3 in March of 2003, you still had the same position 4 that you had when you left the IGroup. You were 5 still the EVP of trade. 6 A. That's my understanding, yes. 7 Q. When Ann says, "I'm excited about the 8 opportunity to be reporting to you directly, 9 developing a strategy and plan for the retail 10 group, which has been lacking these past few 11 years," do you know what she's referring to? 12 A. I don't have any recall. 13 Q. Did Ann Raider ever report to you 14 directly? 15 A. Not -- in reading this, it appears -- 16 I can't recall if she did or she went through 17 another person that reported to me. 18 Q. Well, did you have any managerial 19 responsibility for Ann Raider in the March 2003 20 time frame? 21 A. Again, I don't recall specifically. 22 Reading this thing, it looks like it -- it is the</p>
<p style="text-align: right;">Page 103</p> <p>1 think it was reorganized around that time. 2 Q. It was a consolidation of the sales 3 force? 4 A. My understanding is yes. 5 Q. How did that impact the sales force's 6 efforts to sell products? 7 Let me ask you a better question. 8 Was the sales force refocused or redirected in 9 any way that you can articulate? 10 A. Again, that -- I wasn't operating in 11 that area. So I'm -- I don't have intimate 12 knowledge of that. 13 Q. But you were brought out of the 14 IGroup and put into the core business because 15 there was some -- 16 A. Yeah. 17 Q. -- lack of success on the sales force 18 that they wanted you to address? 19 A. I should be more specific. I was 20 brought in to head up our retail relationships 21 which had suffered some losses. So when you talk 22 about the selling side, that's -- that's -- that</p>	<p style="text-align: right;">Page 105</p> <p>1 case, but I don't recall that. 2 Q. Do you recall working with Ann on 3 anything after leaving the IGroup? 4 A. Yes, I do. 5 Q. What types of things did you work on 6 with Ms. Raider after leaving the IGroup and 7 while you were the EVP of trade? 8 A. My recollection is that we were 9 trying to develop retailers to do the card 10 issuance and the frequent shopper program and 11 that Ann was, that was her major focus, as I 12 recall; and we were working through the other 13 members of the group to make the -- open doors 14 and make introductions for Ann. 15 Q. Did you meet directly with Ann Raider 16 in that context? 17 A. Again, I can't specifically recall at 18 that time period. 19 Q. Do you recall ever working directly 20 with Ms. Raider to develop a strategy and plan 21 for the retail business as stated in this 22 Exhibit 40?</p>

27 (Pages 102 to 105)

Garofalo, Martin

July 17, 2007

New York, NY

<p style="text-align: right;">Page 106</p> <p>1 A. Again, I don't have any specific 2 recall, no. 3 Q. When she says in the second 4 paragraph, "I share your vision. We do need to 5 clearly define what business we are going to be 6 in and then secure the right products/partnership 7 for targeting key accounts with our unique 8 offer," did that refresh any recollection about 9 conversations you had with her? 10 A. It does not. 11 Q. The next sentence states, "Thus far, 12 our loyalty product offering has been diminishing 13 and our stored value product line is still under 14 development." 15 Is that consistent with your memory 16 in 2003? 17 A. Again, I don't have any recall. 18 Q. And she says in the sentence, "To add 19 to the challenges of what to sell is, who would 20 sell it." Do you remember that being a challenge 21 that you and Ann Raider discussed? 22 A. I do not -- I don't recall.</p>	<p style="text-align: right;">Page 108</p> <p>1 recall. 2 Q. When she writes, "In addition, the 3 sales cycle for our products has been about six 4 months," do you recall that? 5 A. I do not. 6 Q. And the last sentence of the first 7 paragraph, she writes, "Finally, SSD in its 8 desire to achieve sales goals, set the direction 9 to focus on non-food retailers in order to 10 achieve the revenue number." 11 Do you remember that to be the case? 12 A. I do not. 13 Q. Do you have in mind what she's 14 saying? In other words, is that a familiar 15 concept to you? 16 A. No. I'm trying to -- go back in my 17 memory bank, and I just don't have a knowledge of 18 it. 19 Q. I'm not going to go through all the 20 bullet points. There are five of them. Have you 21 had a chance to read those bullet points? 22 A. I have not. I just read the body,</p>
<p style="text-align: right;">Page 107</p> <p>1 Q. Do you know who Kevin McKenna is? 2 A. I remember he was an employee, yes. 3 Q. What was his position or title? 4 A. Again, I don't know his specific 5 title. It -- 6 Q. Do you remember his job 7 responsibilities? 8 A. Only in general. 9 Q. When she writes in the second 10 paragraph, "Now the sales responsibility resides 11 with the retail sales force, who is busy, and 12 loyalty is something they are just learning," is 13 that consistent with your memory about the retail 14 sales force? 15 A. Again, I don't recall specifically at 16 this point in time what their knowledge was. 17 Q. Do you have any reason to doubt what 18 she says in this sentence? 19 MR. KATZ: Objection. 20 A. Yeah, I don't know, you know, I -- I 21 don't have reason to doubt or -- or acknowledge 22 what she's saying is true or not. I just don't</p>	<p style="text-align: right;">Page 109</p> <p>1 but if you like, I'll read them now. 2 Q. You can read them and the question I 3 have is this: 4 Can you tell me about those bullet 5 points? Do you have any memory of any of the 6 information that she discusses in these bullet 7 points in Exhibit 40? If you do, then I'll ask. 8 If you don't, then I'll move on. 9 (Witness perusing document.) 10 A. The same as the above. I don't 11 recall any specifics in any of these particular 12 instances. 13 Q. You don't have any knowledge about 14 anything stated in any of those bullet points? 15 MR. KATZ: Objection. 16 A. I don't have any specific knowledge 17 about this, no. 18 Q. Okay. I'm interested in any 19 knowledge. "Specific" is such a -- 20 MR. KATZ: Well, let me ask this: 21 Could you break it out? What are you 22 specifically asking?</p>

28 (Pages 106 to 109)

Garofalo, Martin

July 17, 2007

New York, NY

<p style="text-align: right;">Page 110</p> <p>1 MR. PETERS: I'm asking him --</p> <p>2 Q. -- do you know anything about</p> <p>3 anything in those bullet points? I'm not sure I</p> <p>4 can be more general than that.</p> <p>5 MR. KATZ: Anything of the bullet</p> <p>6 points?</p> <p>7 Q. Do you know anything about anything</p> <p>8 Ann Raider is saying in those bullet points?</p> <p>9 Anything at all.</p> <p>10 A. I remember talking to Ann about</p> <p>11 her -- her coaching and supporting the retail</p> <p>12 sales force. But again, nothing specific, Kevin.</p> <p>13 Q. So just to round this out, you have a</p> <p>14 general memory of addressing that with Ann, but</p> <p>15 no specific memory of what was said.</p> <p>16 A. Right.</p> <p>17 Q. And that exhausts your knowledge of</p> <p>18 anything stated in those bullet points by Ann</p> <p>19 Raider, right?</p> <p>20 MR. KATZ: Objection.</p> <p>21 A. Yes.</p> <p>22 Q. We discussed a moment ago, or maybe</p>	<p style="text-align: right;">Page 112</p> <p>1 year.</p> <p>2 Q. Can you tell me in a very general</p> <p>3 way -- I don't need to get the details, but in a</p> <p>4 very general way -- what the test involved?</p> <p>5 A. Yes. We had two separate sales</p> <p>6 forces after the acquisition of Act Media, and we</p> <p>7 wanted to explore having one group representing</p> <p>8 both lines of portfolios.</p> <p>9 Q. What was Act Media's product or</p> <p>10 products?</p> <p>11 A. Their in-store portfolio.</p> <p>12 Q. And after this test, there was a</p> <p>13 determination to consolidate the sales force?</p> <p>14 A. Yes.</p> <p>15 Q. So there was something that went on</p> <p>16 on the West Coast to figure out whether or not</p> <p>17 this consolidation made sense.</p> <p>18 A. (Witness nodding).</p> <p>19 Q. And when was Act Media acquired?</p> <p>20 A. Again, I'm not sure of this -- of the</p> <p>21 time.</p> <p>22 Q. But it was certainly prior to the</p>
<p style="text-align: right;">Page 111</p> <p>1 ten moments ago, the reorganization of the News</p> <p>2 America Marketing sales force. I'm not sure I</p> <p>3 asked you, did you participate in that</p> <p>4 reorganization?</p> <p>5 MR. KATZ: What's the date on this,</p> <p>6 as you phrased your question?</p> <p>7 MR. PETERS: I believe it's 2000.</p> <p>8 Early 2000.</p> <p>9 A. Yeah, prior to moving to the IGroup,</p> <p>10 there was a test on the West Coast and the person</p> <p>11 who was running the test reported to me. So --</p> <p>12 and then I left for the IGroup. So, you know, I</p> <p>13 was involved from hearing how it was going, but</p> <p>14 that was it.</p> <p>15 Q. The test was to determine how to</p> <p>16 reorganize?</p> <p>17 A. Yes.</p> <p>18 Q. Did you formulate the test?</p> <p>19 A. I couldn't say that I formulated the</p> <p>20 test, no.</p> <p>21 Q. How long was the test?</p> <p>22 A. Again, my recollection was about a</p>	<p style="text-align: right;">Page 113</p> <p>1 acquisition of CCMI?</p> <p>2 A. Yes.</p> <p>3 Q. And the test took about a year?</p> <p>4 A. That's my recollection, yes.</p> <p>5 Q. And the determination to consolidate</p> <p>6 the sales force, that was prior to the CCMI</p> <p>7 acquisition in the summer of '99?</p> <p>8 A. I'm not -- I'm not sure.</p> <p>9 Q. In your capacity as the EVP of sales</p> <p>10 for the IGroup, did you make any approaches to</p> <p>11 any of News America's -- let's call it</p> <p>12 affiliates, Fox, 20th Century Fox, Fox Sports, to</p> <p>13 try to sell CCMI's products?</p> <p>14 A. Not that I can specifically remember.</p> <p>15 Q. Did you consider the possibility of</p> <p>16 synergies between CCMI and other aspects of News</p> <p>17 America's business?</p> <p>18 A. Again, that -- not -- looking back, I</p> <p>19 could theorize, but not that I recall now.</p> <p>20 Q. Do you recall there being any</p> <p>21 problems getting a sufficient staff for CCMI to</p> <p>22 run its business and market its products?</p>

29 (Pages 110 to 113)

Garofalo, Martin

July 17, 2007

New York, NY

Page 114	Page 116
<p>1 A. Not that I can recall.</p> <p>2 Q. Do you recall there was a hiring</p> <p>3 freeze in the 2000 time frame?</p> <p>4 A. I do not.</p> <p>5 Q. Do you recall Ann Raider or Bob</p> <p>6 Fireman complaining to you about the lack of key</p> <p>7 positions being filled?</p> <p>8 A. I cannot recall that, no.</p> <p>9 Q. You don't know whether it happened or</p> <p>10 not? You don't have a memory?</p> <p>11 A. I don't.</p> <p>12 Q. Do you recall any complaints about</p> <p>13 the funding of CCMI's businesses or products and</p> <p>14 services?</p> <p>15 A. No -- not that I recall.</p> <p>16 Q. You don't remember any conversations</p> <p>17 one way or the other with Ann Raider or Bob</p> <p>18 Fireman about that issue?</p> <p>19 A. No.</p> <p>20 Q. Do you remember Bob Fireman ever</p> <p>21 complaining to you about being marginalized in</p> <p>22 the business?</p>	<p>1 Q. Do you remember the date or year?</p> <p>2 A. I -- I really don't.</p> <p>3 Q. Were you the EVP of sales for the</p> <p>4 IGroup at the time?</p> <p>5 A. You know, I really do not remember.</p> <p>6 Q. Do you remember what you were trying</p> <p>7 to sell to Safeway? Maybe that will provide some</p> <p>8 context.</p> <p>9 A. We were talking about card issuance</p> <p>10 for those guys. And I believe we were also</p> <p>11 talking about stored value cards. That's my</p> <p>12 recollection.</p> <p>13 Q. Is there any reason you would have</p> <p>14 been accompanying Bob on a sales call to Safeway</p> <p>15 if you migrated to the EVP of trade?</p> <p>16 A. Yes.</p> <p>17 Q. That's still something you would have</p> <p>18 done?</p> <p>19 A. Yes.</p> <p>20 Q. Do you remember doing that, in other</p> <p>21 words, do you remember participating in the sales</p> <p>22 cycle after you'd gone back to News America</p>
Page 115	Page 117
<p>1 A. Uh -- I have a memory of him</p> <p>2 complaining but I can't recall what it was about,</p> <p>3 'cause -- but I do remember him complaining.</p> <p>4 Q. What do you remember about that?</p> <p>5 A. We were out visiting Safeway, I do</p> <p>6 remember this, we were in a car, he and I, and he</p> <p>7 was driving, and he was kidding around, I think,</p> <p>8 and saying, "Listen, it's not my day to complain,</p> <p>9 but here are some complaints."</p> <p>10 But again, I can't recall exactly</p> <p>11 what he talked about, but he was joking around</p> <p>12 and he was complaining, I know that.</p> <p>13 Q. All right. He was articulating</p> <p>14 concerns to you, he didn't want to look like he</p> <p>15 had trapped you in a car in order to complain.</p> <p>16 MR. KATZ: Objection.</p> <p>17 Q. But that was your impression.</p> <p>18 A. Yes, that was my impression.</p> <p>19 MR. KATZ: Objection.</p> <p>20 Q. And you don't remember what his</p> <p>21 complaints were.</p> <p>22 A. I really cannot recall.</p>	<p>1 Marketing's core business?</p> <p>2 MR. KATZ: Objection.</p> <p>3 A. Again, I'm not sure of the timing but</p> <p>4 like I said, it could have been either prior to</p> <p>5 or after my hiatus, yes.</p> <p>6 Q. Other than this conversation with Bob</p> <p>7 Fireman in the car on the way to pitch Safeway,</p> <p>8 do you remember any other conversations with Bob</p> <p>9 Fireman where he complained about the way News</p> <p>10 America Marketing was running SmartSource Direct?</p> <p>11 A. Again, I have no specific</p> <p>12 recollection other than that.</p> <p>13 Q. Do you remember him being happy?</p> <p>14 A. I -- we -- Bob and I laughed a lot so</p> <p>15 I do remember him being happy. I thought he was</p> <p>16 very entertaining individual.</p> <p>17 Q. What did you think of him as a</p> <p>18 businessperson? And let me just limit your</p> <p>19 recall to the 18 months or so that you were the</p> <p>20 EVP of sales for the IGroup.</p> <p>21 A. As a businessperson? Again, Bob</p> <p>22 didn't report to me during that time period. But</p>

30 (Pages 114 to 117)

Garofalo, Martin

July 17, 2007

New York, NY

<p style="text-align: right;">Page 118</p> <p>1 the feeling I had was that he was not a great 2 businessman, just from my recollection of that 3 time period. 4 Q. What were his deficiencies, in your 5 view? 6 A. Again, this is a recollection. Lack 7 of focus, management deficiencies. Again, I 8 don't recall anything specific. 9 Q. Is this information that was coming 10 to you more or less from Henry Lellouche or 11 information that you developed on your own? 12 A. I think a little bit of both. 13 Q. How much time did you spend around 14 Bob Fireman to allow you to come to these 15 conclusions? 16 A. Again, I couldn't say with any 17 specificity how much time I was spending with him 18 directly or alone or in a group. But, you know, 19 during that time period, there was sufficient 20 time to get to, to be with him, yes. 21 Q. Were you involved in an evaluation 22 process?</p>	<p style="text-align: right;">Page 120</p> <p>1 conversations where we'd be talking about a 2 potential opportunity and she would go, say, "I'm 3 meeting with such-and-such a person," and then 4 she couldn't even remember the name or the title 5 or when the meeting was or whatever. And this 6 was in a relatively short period. So it always 7 made me question, "Well, who are you meeting with 8 and what's going on?" That's my general 9 recollection. 10 Q. Did you raise that with her? 11 A. I don't know if during that time 12 period, I don't think so. I do not -- I don't 13 think that I did. 14 Q. Is that a view that you maintained or 15 did it evolve over time? 16 A. I think at the time that -- I think 17 there are certain things that Ann did well, and 18 there's things on the recollection and work ethic 19 that I found lacking. 20 Q. Tell me about the work ethic that you 21 found notable and problematic. 22 A. Again, it's more general because I</p>
<p style="text-align: right;">Page 119</p> <p>1 A. Not that I can recall in any specific 2 way. 3 Q. Is it News America Marketing's 4 practice to note weaknesses in its employees, in 5 its evaluations, so that the employees can work 6 on those? 7 A. My understanding is yes. 8 Q. And do you know who evaluated Bob 9 Fireman during your 18 months as the EVP of sales 10 for the IGroup? 11 A. Again, my understanding would be 12 either Henry or Chris. 13 Q. Did you form any view of Ann Raider 14 as a businessperson during the 18 months you were 15 the EVP of sales? 16 A. Yes. 17 Q. What was that evaluation? 18 A. I thought that she lacked a little 19 credibility. 20 Q. Why do you say that? What was the 21 basis of that opinion? 22 A. I remember a lot -- several general</p>	<p style="text-align: right;">Page 121</p> <p>1 can't remember any specifics. But just, "Where 2 are you going to be on this date?" And, "I'm 3 going to be visiting D.C. but I'm also seeing my 4 son," because he was going to school I think down 5 there at the time or whatever, and it just was 6 not a standard -- uh -- you know, practice to be 7 doing that. If you wanted to go do that and 8 combine it, then you'd mention it beforehand. 9 That type of stuff. 10 Q. Do you have any reason to believe she 11 didn't work hard? 12 A. I felt that she could work harder, in 13 my estimation. 14 Q. Can you tell me why you believe that 15 with any kind of precision? 16 A. I, again, looking back, call plans 17 not being filled out as robustly as I would 18 probably like to see from other people that had 19 reported to me. 20 But again, nothing more specific that 21 I can recall. 22 Q. Did you share those observations with</p>

31 (Pages 118 to 121)

Garofalo, Martin

July 17, 2007

New York, NY

Page 122	Page 124
<p>1 any of Ann's direct managers so that they could 2 be put in an evaluation? 3 A. Not that I can -- not that I can 4 specifically recall, no. But... 5 Q. In other words, were the issues 6 concerning enough to you that you raised them 7 with anyone else so that they might be 8 memorialized in an evaluation? 9 A. Not that I can specifically recall, 10 again. 11 Q. Is part of News America's culture to 12 share information among executive vice-presidents 13 about others within the organization? 14 A. Yeah, I would think -- uh -- I know 15 that when we do evaluations, that the heads of 16 each of the groups would be there. So at the 17 annual performance appraisal there would be a 18 forum to discuss that. 19 So I'm sure that was part of it. 20 Q. And that forum would include you? 21 A. Not for the time I was outside the 22 group, again. But for the time that I was</p>	<p>1 A. During this 18-month period we're 2 talking about? 3 Q. Yes, sir. 4 A. No. 5 Q. He was the general manager during 6 your tenure with the IGroup? 7 A. General manager of the -- 8 Q. Of SmartSource Direct. 9 A. Over those 18 months? 10 Q. Yes. 11 A. No, but I wasn't responsible. 12 Q. Let me -- I think I understand what 13 you're saying. Let me see if I can get it all 14 lined up. 15 A. Okay. 16 Q. During the 18 months you were the EVP 17 of sales for the IGroup, Henry Lellouche was the 18 general manager of SmartSource Direct. 19 A. Okay. 20 Q. Right? 21 A. Yes. 22 Q. But you didn't have any role in</p>
Page 123	Page 125
<p>1 responsible for the IGroup or the time that I 2 was -- that 18 months within the IGroup, yes. 3 Q. So these were observations that you 4 would have shared with the group that was 5 evaluating Ann Raider? 6 A. Again, I don't have any specific 7 recall, but the forum would be available to do 8 such, yes. 9 Q. If it were serious enough to you to 10 mention, you would mention it? 11 A. I think so, yes. 12 Q. And then it would appear in her 13 evaluations? 14 A. I think so, yes. 15 Q. Okay. So if it's not in her 16 evaluations, can we infer that it wasn't serious 17 enough to you to mention? 18 MR. KATZ: Objection. 19 A. Again, I wouldn't know, you know. 20 Q. Were you involved in the decision to 21 make Henry Lellouche the general manager of 22 SmartSource Direct?</p>	<p>1 putting him in the position of general manager. 2 A. That's exactly right, yes. 3 Q. You don't remember anything about the 4 process that led to Henry Lellouche taking over 5 as general manager of SmartSource Direct. 6 A. Only -- it was presented to me, this 7 would be the team, by Chris Mixson; and again, my 8 recollection is that Henry was involved with the 9 venture group in evaluating the opportunities 10 that came in to be part of the IGroup. 11 Q. Did you ever see Bob Fireman's 12 employment contract? 13 A. No. 14 Q. Do you know whether Bob Fireman was 15 hired with the title of general manager? 16 A. I don't -- I'm not aware of that. 17 Q. Did anyone ever talk to you about 18 removing responsibilities from Bob Fireman and 19 giving them to other people within News America 20 Marketing, whether it be Mr. Lellouche or others? 21 A. Was it ever discussed with me? No, 22 not that I can recall.</p>

32 (Pages 122 to 125)

Garofalo, Martin

July 17, 2007

New York, NY

<p style="text-align: right;">Page 126</p> <p>1 Q. Do you know whether or not Bob 2 Fireman's responsibilities as general manager for 3 CC -- let me take it in smaller steps. You knew 4 that Bob Fireman had been the general manager for 5 CCMI, correct? 6 A. I thought he was an owner of the 7 company. 8 Q. But he also ran it -- 9 A. Okay. 10 Q. -- he was the -- 11 MR. KATZ: Are you asking what he 12 knew? 13 Q. I'm asking if you know that Bob 14 Fireman ran CCMI with Ann Raider. 15 A. I was aware that the two of them ran 16 the company, yes. 17 Q. Did you have any understanding of 18 what Bob Fireman's responsibilities were in CCMI? 19 A. Again, I didn't have any 20 understanding of that prior to coming on board 21 and even after that, I wasn't -- like, I was 22 never aware that -- you just mentioned he was the</p>	<p style="text-align: right;">Page 128</p> <p>1 Q. Right? 2 A. Yes. 3 Q. Do you recall that she had the title, 4 executive vice president? 5 A. I don't recall. 6 Q. Do, in your experience, titles at 7 News America Marketing have specific -- I'm not 8 sure how I can articulate this -- is there an EVP 9 level at News America Marketing marketing that is 10 consistent throughout the different business 11 units? 12 MR. KATZ: Objection. 13 A. I think in general, yes. 14 Q. In other words, it's not just -- let 15 me just put it more in the vernacular -- it's not 16 just a title handed out. An EVP, executive vice 17 president, has a specific meaning within the 18 organization, as far as you know. 19 A. I'd say yes. 20 Q. It's part of a reporting structure. 21 A. Again, yes. 22 Q. Okay. And in your experience, do</p>
<p style="text-align: right;">Page 127</p> <p>1 general manager. I wasn't aware of that. 2 Q. You have no memory of any 3 responsibilities being removed from Bob Fireman, 4 I take it, and given to others? 5 A. Not to my knowledge. 6 Q. Did you know what Ann Raider's 7 responsibilities were at CCMI before the 8 acquisition? 9 A. I wasn't aware. 10 Q. Did you know that she was in a sales 11 capacity in CCMI? 12 A. Now that you mention it, it made 13 sense, but again, I have no recall of that, no. 14 Q. And what was her position at 15 SmartSource Direct, as you can recall? 16 A. I think she helped in the sales of 17 the SmartSource Direct portfolio of items that -- 18 Q. Do you recall -- I'm sorry, I jumped 19 on the end of your response. She was involved in 20 the portfolio of items, the sale of that 21 portfolio? 22 A. Um-hum.</p>	<p style="text-align: right;">Page 129</p> <p>1 executive vice-presidents report to -- let me ask 2 you, not tell you -- to whom in the reporting 3 structure do executive vice-presidents report? 4 MR. KATZ: Objection. 5 A. My current understanding is, they 6 would report to either a president, another EVP, 7 or the CEO. 8 Q. Okay. So an EVP can report to the 9 president or another EVP? 10 A. Yes. 11 Q. Or the CEO? 12 A. Yes. 13 Q. And to whom do you report? 14 A. Currently? 15 Q. Yes. 16 A. I report to Paul Carlucci. 17 Q. The CEO. 18 A. The CEO, yes. 19 Q. Ann Raider was an EVP who reported to 20 an EVP, right? Do you recall that? 21 A. You know, I don't recall that. 22 Q. Well, that's an unfair question</p>

33 (Pages 126 to 129)

Garofalo, Martin

July 17, 2007

New York, NY

<p style="text-align: right;">Page 130</p> <p>1 because you don't recall that she was an 2 executive vice president, either, right? 3 A. Yes, I do not recall that. 4 Q. Okay. 5 MR. KATZ: Time for lunch? 6 MR. PETERS: Oh, sure. Why not? 7 (Luncheon recess: 12:23 p.m.) 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22</p>	<p style="text-align: right;">Page 132</p> <p>1 A. I don't. 2 Q. Okay. The same questions for Ann 3 Raider. First question, do you remember Ann 4 Raider's job responsibilities changing during 5 your 18-month tenure with IGroup? 6 A. I don't. 7 Q. And when you left the IGroup, do you 8 recall hearing that Ann Raider's responsibilities 9 had changed? 10 A. Not until she reported to me. 11 Q. Not until she reported those changes 12 to you or reported to you? 13 A. As per that document, at some point 14 she came over and was working with the retail 15 group, which was the trade group. 16 Q. I may now no longer have memory of 17 that testimony. I thought you said you don't 18 remember Ann Raider specifically reporting to 19 you. 20 A. I don't, other than that memo saying, 21 "Now that I'm reporting directly to you," working 22 directly with me.</p>
<p style="text-align: right;">Page 131</p> <p>1 AFTERNOON SESSION 2 (1:28 p.m.) 3 MARTIN GAROFALO, having been 4 previously sworn, resumed the stand and 5 testified further as follows: 6 EXAMINATION (Cont'd.) 7 BY MR. PETERS: 8 Q. Mr. Garofalo, before we broke for 9 lunch, I was discussing, we were discussing, 10 changes in Bob Fireman and Ann Raider's job 11 respondents or job functions. 12 I'll ask you in a general way, do you 13 remember there being any specific changes or 14 general changes in Bob Fireman's responsibilities 15 during your 18 months as the EVP of sales for the 16 IGroup? 17 A. I do not remember any. 18 Q. And after you left the IGroup and 19 went back to News America Marketing's core 20 business as the EVP of trade, do you remember 21 learning that Bob Fireman's job responsibilities 22 at SmartSource Direct had changed?</p>	<p style="text-align: right;">Page 133</p> <p>1 Q. But you don't have any specific 2 memory of her job responsibilities and you don't 3 remember interacting with her. 4 A. No. 5 Q. Am I correct? 6 A. Yes. 7 Q. Did Mr. Carlucci have any involvement 8 in the business, day-to-day business of the 9 IGroup during your tenure? 10 A. No. 11 Q. Did you discuss the IGroup or any of 12 the business units within the IGroup with 13 Mr. Carlucci? 14 A. Yes. 15 Q. Can you tell me the types of things 16 that you would have elevated to him that pertain 17 to SmartSource Direct? 18 A. I don't recall any specifics. 19 Q. How frequently did you speak with 20 Mr. Carlucci about SmartSource Direct during your 21 tenure as EVP of sales? 22 A. I don't recall any specific reporting</p>

34 (Pages 130 to 133)

Garofalo, Martin

July 17, 2007

New York, NY

<p style="text-align: right;">Page 134</p> <p>1 on those...</p> <p>2 Q. Did you attend executive board</p> <p>3 meetings?</p> <p>4 A. Executive committee, yes.</p> <p>5 Q. Executive committee meetings. And</p> <p>6 did you do that on a regular basis?</p> <p>7 A. Yes.</p> <p>8 Q. How frequently did those meetings</p> <p>9 take place?</p> <p>10 A. Each Monday.</p> <p>11 Q. Who was tasked with discussing</p> <p>12 SmartSource Direct at these meetings?</p> <p>13 MR. KATZ: Objection.</p> <p>14 A. My recollection would be Chris.</p> <p>15 MR. KATZ: Do you have a time period,</p> <p>16 Kevin?</p> <p>17 MR. PETERS: During the time that he</p> <p>18 attended the executive committee meetings.</p> <p>19 A. It's the distinction, I guess -- the</p> <p>20 18 months, it would be Chris. And then various</p> <p>21 people as the reporting structure changed.</p> <p>22 Q. After Mr. Mixson left the IGroup,</p>	<p style="text-align: right;">Page 136</p> <p>1 Q. That's not consistent with your</p> <p>2 experience?</p> <p>3 A. No.</p> <p>4 Q. Was SmartSource Direct allowed to</p> <p>5 advertise in trade journals, trade publications</p> <p>6 during your 18 months?</p> <p>7 A. I don't recall so.</p> <p>8 Q. Do you recall Ann Raider asking for</p> <p>9 permission to advertise?</p> <p>10 A. I don't recall that, no.</p> <p>11 Q. Is trade advertising something that</p> <p>12 News America Marketing does, in your experience?</p> <p>13 A. No.</p> <p>14 Q. They do not?</p> <p>15 A. They do not.</p> <p>16 Q. Do you know why?</p> <p>17 A. Since I've been here, I think the</p> <p>18 overall philosophy is that you'll go out and make</p> <p>19 the sales calls to the appropriate people and we</p> <p>20 don't spend our money on trade advertising.</p> <p>21 Q. Did you ever speak with Ann Raider</p> <p>22 about that?</p>
<p style="text-align: right;">Page 135</p> <p>1 where did he go?</p> <p>2 A. He rejoined the core organization to</p> <p>3 run, head up sales.</p> <p>4 Q. Who took over his job</p> <p>5 responsibilities with the IGroup?</p> <p>6 A. My recollection is, Bill Christie.</p> <p>7 Q. Did Bill Christie then report at the</p> <p>8 executive committee meetings?</p> <p>9 MR. KATZ: Objection.</p> <p>10 A. I don't recall him doing that. But</p> <p>11 it would have been his responsibility.</p> <p>12 Q. Did you get the impression that the</p> <p>13 IGroup was less and less the topic of discussion</p> <p>14 at the executive committee meetings as time went</p> <p>15 on?</p> <p>16 MR. KATZ: Objection.</p> <p>17 A. I don't have any recollection of</p> <p>18 that.</p> <p>19 Q. Did senior management lose interest</p> <p>20 in SmartSource Direct?</p> <p>21 MR. KATZ: Objection.</p> <p>22 A. No.</p>	<p style="text-align: right;">Page 137</p> <p>1 A. Not that I can recall.</p> <p>2 Q. Do you remember Ann Raider ever</p> <p>3 discussing that with anyone who then reported her</p> <p>4 concern to you?</p> <p>5 A. Again, not that I can recall.</p> <p>6 Q. Was there a group called</p> <p>7 Salesforce.com, is that a name familiar to you?</p> <p>8 A. Not that I can recall.</p> <p>9 Q. Were you involved in any way in the</p> <p>10 purchase of Epiphany software?</p> <p>11 A. No.</p> <p>12 Q. Were you involved in any way in</p> <p>13 transferring Bill Adam from SmartSource Direct to</p> <p>14 work in Connecticut?</p> <p>15 A. No.</p> <p>16 Q. You had no role in that whatsoever?</p> <p>17 A. No.</p> <p>18 Q. Do you remember an acronym M-A-S, or</p> <p>19 MAS, as it applies to CCMI?</p> <p>20 A. I do not.</p> <p>21 Q. Do you remember that ever being</p> <p>22 suggested to you, that that was the marketing</p>

35 (Pages 134 to 137)

Garofalo, Martin

July 17, 2007

New York, NY

<p style="text-align: right;">Page 138</p> <p>1 analysis tool? Does that refresh any 2 recollection? 3 A. No. 4 Q. Do you remember what the marketing 5 analysis tool was that CCMi used? 6 A. No. 7 Q. Do you recall how many supermarkets 8 were using CCMi's software to track loyalty data? 9 MR. KATZ: Objection. 10 A. No. 11 Q. Is that something you ever looked 12 into, to see how strong CCMi's market share was 13 in loyalty cards? 14 A. I don't recall doing that. 15 Q. Did CCMi expand into the gift card 16 segment of the market, card programs, during your 17 tenure as EVP of sales? 18 A. I know that they were attempting to. 19 But I can't recall if they were successful at 20 that time. 21 Q. Were you involved in a pitch to Ahold 22 to sell cards?</p>	<p style="text-align: right;">Page 140</p> <p>1 Q. And that's the last and only dinner 2 you had with Ann and Bob? 3 A. I don't recall another time. 4 Q. Do you remember either of them 5 complaining to you about lack of financial 6 support? 7 A. I don't. 8 Q. Do you recall either of them 9 complaining to you about a lack of technical 10 support? 11 A. I do not, no. 12 Q. Do you recall either of them 13 complaining to you about a lack of administrative 14 support? 15 A. No, I do not. 16 Q. Do you recall any complaints 17 whatsoever that they made to you other than what 18 you may have testified to so far? 19 A. I -- I don't have any specific 20 recollection of that, no. 21 Q. How many sales calls did you attend 22 with Ann Raider or Bob Fireman?</p>
<p style="text-align: right;">Page 139</p> <p>1 A. I was not. 2 Q. Were you involved in an effort to 3 develop a stored value money card to be marketed 4 specifically to the Hispanic community? 5 A. No. 6 Q. Do you remember having dinner with 7 Ann Raider and Bob Fireman at some point? 8 A. I do. 9 Q. Do you remember that they expressed 10 to you that they were dismayed about the way 11 SmartSource Direct had been run? 12 A. I do not. 13 Q. What do you remember about the 14 dinner? 15 A. I believe it was in conjunction to 16 our first meeting and it was up in Boston. We 17 went to a restaurant with brick on the walls and 18 I think it was just Bob and Ann and Chris and I, 19 Chris Mixson and I. 20 Q. And that was at the very beginning of 21 your tenure? 22 A. Yes.</p>	<p style="text-align: right;">Page 141</p> <p>1 A. I can remember being out with each of 2 them one time specifically. 3 Q. What companies did you pitch? 4 A. With Bob, it was with Safeway. And 5 with Ann, I believe it was Winn-Dixie. 6 Q. Did you pitch KMart? 7 A. Yes. 8 Q. With Ann? 9 A. I was going to say Bob. So -- you 10 know. 11 Q. Okay. Were you impressed with the 12 products that had been built when you made those 13 pitches with Bob Fireman and Ann Raider? 14 MR. KATZ: Objection. 15 Do you understand the question? 16 A. I guess -- do I think that they 17 were -- I don't know -- 18 Q. I'll withdraw it. Let me withdraw it 19 and I'll ask you another way. 20 Didn't you tell Bob Fireman in 21 substance that you were impressed with the 22 products that CCMi had built and that you told</p>

36 (Pages 138 to 141)

Garofalo, Martin

July 17, 2007

New York, NY

<p style="text-align: right;">Page 142</p> <p>1 him they were in substance good, smart products?</p> <p>2 A. Yeah, again, I can't recall that.</p> <p>3 Q. Were you involved in the decision to</p> <p>4 terminate Bob Fireman?</p> <p>5 MR. KATZ: Objection.</p> <p>6 A. Yes.</p> <p>7 Q. Can you tell me your role?</p> <p>8 A. My recollection is that Bob's</p> <p>9 contract was coming to an end, and I believe</p> <p>10 that, although he wasn't directly reporting to</p> <p>11 me, that I volunteered to go speak to him about</p> <p>12 not renewing the agreement.</p> <p>13 Q. Do you remember that he was removed</p> <p>14 from the office some period of months prior to</p> <p>15 the expiration of his contract?</p> <p>16 A. Yes.</p> <p>17 Q. Were you involved in that decision?</p> <p>18 A. Yes.</p> <p>19 Q. Can you tell me what the motivation</p> <p>20 was or the inspiration was to remove Mr. Fireman</p> <p>21 from News America Marketing's offices before the</p> <p>22 end of his contract?</p>	<p style="text-align: right;">Page 144</p> <p>1 client, but then it turns out he answered me from</p> <p>2 the golf course. I don't remember exactly when</p> <p>3 that was, but I needed information, I can't</p> <p>4 remember what, but I caught him on the golf</p> <p>5 course, which, you know, wasn't in his call plan</p> <p>6 and is not something that is typically done.</p> <p>7 And then another time, I got a call</p> <p>8 from one of his people in the office and saying,</p> <p>9 "I was trying to find Bob, he's not here, where</p> <p>10 is he supposed to be?" And we checked and we</p> <p>11 couldn't find him. He was supposed to be in the</p> <p>12 office. Those are the two specific things I</p> <p>13 recall.</p> <p>14 Q. Who was he reporting to at the time?</p> <p>15 A. I believe it was Henry.</p> <p>16 Q. Are those the types of things that</p> <p>17 should be noted in Bob Fireman's evaluations?</p> <p>18 MR. KATZ: Objection.</p> <p>19 A. Yes.</p> <p>20 Q. Did you know that part of the</p> <p>21 purchase price for CCMI was in the form of an</p> <p>22 earn-out?</p>
<p style="text-align: right;">Page 143</p> <p>1 A. Yes. My general recollection was</p> <p>2 that, the feeling was, we weren't going to pick</p> <p>3 up the -- his agreement to go any further and</p> <p>4 that there wasn't a lot of sales, if any, over</p> <p>5 the last time period. Again, he was reporting to</p> <p>6 someone else. But that was my recollection.</p> <p>7 And that we were a very structured</p> <p>8 sales organization and we wanted to have the more</p> <p>9 senior people setting good examples. And we felt</p> <p>10 that it was time for Bob to finish out his</p> <p>11 employment without being in the office.</p> <p>12 Q. What about Bob did you think was a</p> <p>13 bad example, or setting a bad example?</p> <p>14 A. I think just, again, in the areas of</p> <p>15 work ethic and amount of time spent in the</p> <p>16 office, and being accountable for where he was,</p> <p>17 it was a general recollection.</p> <p>18 Q. What was said on that topic and by</p> <p>19 whom?</p> <p>20 A. I remember a couple of specific</p> <p>21 things. One, trying to reach Bob and looking at</p> <p>22 his call schedule and he was going to be with a</p>	<p style="text-align: right;">Page 145</p> <p>1 A. At some point, I -- that's my</p> <p>2 understanding now, at some point, but not at the</p> <p>3 time I was there. It's my recollection.</p> <p>4 Q. Did you learn that there were bonuses</p> <p>5 in the first and second year that Ann Raider and</p> <p>6 Bob Fireman could achieve if they met certain</p> <p>7 sales levels?</p> <p>8 A. Not -- I wasn't aware of that.</p> <p>9 Q. When did you learn about the earn-out</p> <p>10 component of the purchase price for CCMI?</p> <p>11 A. I believe it was -- it was at certain</p> <p>12 times during each of those years that they would</p> <p>13 come in and talk to the finance group, what would</p> <p>14 they talk about, and it was about this earn-out.</p> <p>15 But that was my understanding of it, or...</p> <p>16 Q. Whom did you learn of it from?</p> <p>17 A. I can't recall.</p> <p>18 Q. Did you participate in any</p> <p>19 conversations regarding the earn-out?</p> <p>20 A. Not that I -- I'm aware.</p> <p>21 Q. When Bob Fireman was removed from</p> <p>22 News America's offices prior to the end of his</p>

37 (Pages 142 to 145)

Garofalo, Martin

July 17, 2007

New York, NY

<p style="text-align: right;">Page 146</p> <p>1 employment contract, do you recall any 2 conversation internally about the impact that 3 that would have on his ability to achieve 4 earn-out? 5 A. Not that I recall. 6 Q. That wasn't discussed at all, that 7 you remember? 8 A. Not that I remember, no. 9 Q. Who was involved in the discussions 10 that led to the decision to remove Bob Fireman 11 from News America's offices prior to the end of 12 his contract? 13 A. My recall is, it was done by 14 committee, and the person that I remember 15 speaking to was Rita Meyer. 16 Q. Who was on the committee? 17 A. That would be Chris Mixson, Bill 18 Christie, Joe Trainor, Paul Carlucci, John 19 Linguiti -- 20 Q. Sorry, the last name? 21 A. John Linguiti. Gene Klein. Gene 22 Klein, sorry. It was the executive committee at</p>	<p style="text-align: right;">Page 148</p> <p>1 Q. Tell me the substance of the 2 conversation between you and Bob Fireman on the 3 day he was told that he had to leave the offices. 4 A. Again, I don't have any specific 5 recollections. I believe, as I stated, that I 6 volunteered to do it 'cause I enjoy Bob as a 7 person and felt that I would be the best person 8 to deliver the message, the news. 9 Q. But you don't remember the 10 conversation? 11 A. No. I know he did not want to leave, 12 you know, the office. 13 Q. Did he tell you in substance, "How am 14 I going to achieve earn-out if I don't have, you 15 know, I'm undercut even further"? 16 MR. KATZ: Objection. 17 A. Again, I don't recall the 18 conversation in detail. 19 Q. What did Rita Meyer say at the 20 executive committee meeting that resulted in the 21 decision to remove Bob Fireman from News America 22 Marketing's offices?</p>
<p style="text-align: right;">Page 147</p> <p>1 the time. 2 Q. Who is Rita Meyer? 3 A. Rita is the head of human resources 4 at News America Marketing. 5 Q. What was her role in the discussions? 6 Was she heading them up? 7 A. Again, I can't recall if she was 8 heading them up. But she prepared the paperwork. 9 Q. Paperwork being a release, for 10 example? 11 A. Yes. 12 Q. Did you give Bob Fireman a copy of a 13 release to sign? 14 A. I think I did, yes. 15 Q. Can you tell me the discussions that 16 led to the decision to try to get Bob Fireman to 17 release News America Marketing from whatever 18 claims he had? 19 A. I don't recall. 20 Q. Did Bob Fireman sign the release? 21 A. I don't -- I don't believe he signed 22 anything the day that I spoke with him.</p>	<p style="text-align: right;">Page 149</p> <p>1 A. I don't recall. 2 Q. Do you recall what any of these 3 executive committee members said on the topic? 4 A. I really do not. 5 Q. How long was the conversation among 6 the executive committee? 7 A. I don't recall a specific discussion 8 on it. 9 Q. Did it come up more than once at 10 executive committee meetings that you attended? 11 A. My recollection is, it did come up 12 more than once. 13 Q. Do you recall the discussion at any 14 of the committee meetings regarding removing Bob 15 Fireman from the office before his contract 16 expired? 17 A. I don't have recall on the 18 conversations. 19 Q. Do you recall anyone at News America 20 Marketing ever suggesting that removing Bob 21 Fireman from his office prior to the expiration 22 of his contract might have impact on his ability</p>

38 (Pages 146 to 149)

Garofalo, Martin

July 17, 2007

New York, NY

<p style="text-align: right;">Page 150</p> <p>1 to achieve earn-out?</p> <p>2 A. I don't recall that.</p> <p>3 MR. PETERS: The next exhibit,</p> <p>4 please. 41.</p> <p>5 (Plaintiff Exhibit (Garofalo) 41,</p> <p>6 e-mail chain Bates numbered FR1318, marked</p> <p>7 for identification, as of this date.)</p> <p>8 Q. Would you take a look at Exhibit 41</p> <p>9 and tell me if you remember seeing this.</p> <p>10 (A pause in the proceedings.)</p> <p>11 A. Yeah, I don't have any recall of</p> <p>12 seeing this prior to now.</p> <p>13 Q. You are shown as a cc on these two</p> <p>14 e-mails, correct?</p> <p>15 A. Yes.</p> <p>16 Q. So I take it you have no reason to</p> <p>17 doubt you received it.</p> <p>18 A. No.</p> <p>19 Q. You just don't remember seeing it.</p> <p>20 A. Yes.</p> <p>21 Q. Okay. In the bottom e-mail from</p> <p>22 Laura Frauenhofer, she writes, "Bob, please be</p>	<p style="text-align: right;">Page 152</p> <p>1 A. I don't recall.</p> <p>2 Q. Do you remember if Bob Fireman was</p> <p>3 effectively excluded from working for News</p> <p>4 America Marketing as of May, late May 2004?</p> <p>5 A. My recollection is that we did allow</p> <p>6 him to use his phone and I cannot recall what</p> <p>7 happened with the computer access, but I think</p> <p>8 that, my recollection is that we reinstated the</p> <p>9 use of the computer.</p> <p>10 Q. The computer or the phone or both?</p> <p>11 A. Both. That's my recollection.</p> <p>12 Q. Did you see any of CCMI's business</p> <p>13 plans when you took over as the EVP of sales for</p> <p>14 the IGroup?</p> <p>15 A. Not that I recall.</p> <p>16 Q. Do you recall ever discussing CCMI's</p> <p>17 business plans that existed at the time of the</p> <p>18 acquisition?</p> <p>19 A. Again, not that I recall.</p> <p>20 Q. Do you now know that CCMI did have</p> <p>21 business plans that existed at the time of the</p> <p>22 acquisition?</p>
<p style="text-align: right;">Page 151</p> <p>1 notified that your computer access, building</p> <p>2 access, et cetera, will be shut down. Marty will</p> <p>3 speak to you on Tuesday to sort out further</p> <p>4 details of your exit from the company, Laura."</p> <p>5 Do you remember that that in fact</p> <p>6 happened, that his computer access and building</p> <p>7 access was shut down?</p> <p>8 A. I don't recall.</p> <p>9 Q. Do you remember discussions among the</p> <p>10 executive committee about doing that?</p> <p>11 A. No.</p> <p>12 Q. The response from Mr. Fireman, he</p> <p>13 writes, "Laura, Marty only told me that I could</p> <p>14 not continue to work out of the office in Boston</p> <p>15 and that I could continue to work with our</p> <p>16 accounts and finish the work I was doing to</p> <p>17 generate new revenue for the company. This will</p> <p>18 be hard to do without access to the company</p> <p>19 server and my phone access as well. Please check</p> <p>20 with him."</p> <p>21 Did Laura check with you on that</p> <p>22 point?</p>	<p style="text-align: right;">Page 153</p> <p>1 A. Only through you stating such. I</p> <p>2 mean, I had no knowledge of that.</p> <p>3 Q. Okay. Do you believe that no one --</p> <p>4 let me -- this is clumsy so let me just start.</p> <p>5 I know you don't remember talking</p> <p>6 about or seeing the business plans for CCMI; is</p> <p>7 that a correct statement?</p> <p>8 A. Yes.</p> <p>9 Q. Do you believe that you didn't? In</p> <p>10 other words, do you believe you never saw those</p> <p>11 business plans?</p> <p>12 A. I don't think I ever saw them, no.</p> <p>13 Q. And do you believe you never spoke</p> <p>14 about CCMI's business plans while you were the</p> <p>15 EVP of sales?</p> <p>16 A. I don't recall ever sitting down and</p> <p>17 discussing the business plans, no.</p> <p>18 Q. So there was no effort to follow, I</p> <p>19 take it, CCMI's business plans.</p> <p>20 A. I'm -- I wouldn't be the one to be</p> <p>21 able to judge that because I wasn't involved with</p> <p>22 all the things that came prior to me being</p>

39 (Pages 150 to 153)

Garofalo, Martin

July 17, 2007

New York, NY

Page 154	Page 156
<p>1 involved.</p> <p>2 Obviously, I had very much a vested</p> <p>3 interest in seeing the entity be successful</p> <p>4 because my bonus was wrapped up in how we did in,</p> <p>5 all along, hitting benchmarks. So I wanted him</p> <p>6 to have a great success.</p> <p>7 Q. Was your bonus wrapped up in how</p> <p>8 successful SoftCard did as well? Maybe I should</p> <p>9 ask -- withdraw it and ask this question more</p> <p>10 generally.</p> <p>11 A. Okay.</p> <p>12 Q. How was your bonus comprised?</p> <p>13 MR. KATZ: Point in time?</p> <p>14 MR. PETERS: The 18 months that he</p> <p>15 was the EVP of sales for IGroup.</p> <p>16 A. Basically hitting an overall budget</p> <p>17 number based on what the sales would be for the</p> <p>18 entire unit and then at a certain level, most</p> <p>19 everybody's bonus at the EVP level is</p> <p>20 discretionary. But it's based on those numbers,</p> <p>21 though.</p> <p>22 Q. But the budget number was the number</p>	<p>1 Q. Do you recall if the IGroup's targets</p> <p>2 were achieved during your tenure?</p> <p>3 A. I do not -- I don't know the</p> <p>4 disposition at the end of the year, no.</p> <p>5 Q. You don't know whether you met them</p> <p>6 or not.</p> <p>7 A. I don't remember.</p> <p>8 (A pause in the proceedings.)</p> <p>9 MR. PETERS: Could you mark this as</p> <p>10 Exhibit 42.</p> <p>11 (Deposition Exhibit (Garofalo) 42,</p> <p>12 set of presentation documents, marked for</p> <p>13 identification, as of this date.)</p> <p>14 (A pause in the proceedings.)</p> <p>15 Q. Take a look at what we've marked as</p> <p>16 Exhibit 42, Mr. Garofalo, and tell me if you have</p> <p>17 seen that at any time before today.</p> <p>18 (Witness perusing documents.)</p> <p>19 A. I don't recall seeing this prior to</p> <p>20 now.</p> <p>21 Q. Okay. Do you recall seeing anything</p> <p>22 like that, in other words, some kind of</p>
Page 155	Page 157
<p>1 for the whole IGroup, right?</p> <p>2 A. I can't re -- I can't recall.</p> <p>3 Q. In other words -- let me ask you</p> <p>4 this:</p> <p>5 Did the three business units within</p> <p>6 the IGroup have separate targets?</p> <p>7 A. I don't -- I don't remember.</p> <p>8 Q. If CCMI met its targets and SoftCard</p> <p>9 did not and you did not, do you know whether or</p> <p>10 not you'd be compensated for a bonus just on one</p> <p>11 of the three?</p> <p>12 A. Probably not. I think it's in its</p> <p>13 totality.</p> <p>14 Q. Right. So in order to get a bonus</p> <p>15 during the 18 months that you were EVP of sales</p> <p>16 for the IGroup, the IGroup's number had to be</p> <p>17 met.</p> <p>18 A. Yeah. I don't recall specifically</p> <p>19 what it was but that was my understanding.</p> <p>20 Q. Did you get a bonus?</p> <p>21 A. Uh -- I don't recall ever not</p> <p>22 receiving a bonus.</p>	<p>1 PowerPoint presentation that discussed or</p> <p>2 describes CCMI's business and business plans?</p> <p>3 A. I don't recall.</p> <p>4 MR. PETERS: The next document we'll</p> <p>5 mark is Bates-stamped NAM 828 through 33.</p> <p>6 In fact, I'll mark that and we'll mark</p> <p>7 these next two pages as well which I'll</p> <p>8 then describe for the record.</p> <p>9 (Plaintiff Exhibit (Garofalo) 44,</p> <p>10 six-page document Bates numbered NAM 828</p> <p>11 through 833, marked for identification, as</p> <p>12 of this date.)</p> <p>13 (Plaintiff Exhibit (Garofalo) 45,</p> <p>14 single-page document Bates numbered</p> <p>15 FR3461, marked for identification, as of</p> <p>16 this date.)</p> <p>17 (Plaintiff Exhibit (Garofalo) 46,</p> <p>18 single-page document Bates numbered</p> <p>19 FR4889, marked for identification, as of</p> <p>20 this date.)</p> <p>21 Q. Please take a look at Exhibits 44</p> <p>22 through 46. 44, I've discussed the Bates label.</p>

40 (Pages 154 to 157)

Garofalo, Martin

July 17, 2007

New York, NY

<p style="text-align: right;">Page 158</p> <p>1 45 is FR3461 and 46 is FR4889.</p> <p>2 My question is, do any of these three</p> <p>3 exhibits look familiar to you, are they something</p> <p>4 you recall seeing in the context of your work for</p> <p>5 the IGroup?</p> <p>6 (Witness perusing documents.)</p> <p>7 A. I don't recall seeing these.</p> <p>8 Q. Did you ever see financial</p> <p>9 predictions generated by News America Marketing</p> <p>10 for SmartSource Direct's business?</p> <p>11 A. I don't recall seeing them.</p> <p>12 Q. Are those the type of documents that</p> <p>13 you would have seen if they existed in your</p> <p>14 capacity as EVP of sales?</p> <p>15 A. I think yes.</p> <p>16 Q. Okay. We were discussing the fact</p> <p>17 that you were compensated, at least could have</p> <p>18 been partly compensated on a bonus basis, based</p> <p>19 on achieving targets. Those targets would have</p> <p>20 been financial projections that were prepared by</p> <p>21 News America Marketing?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 160</p> <p>1 don't recall doing it.</p> <p>2 Q. So that would have been something</p> <p>3 that would have made sense from your perspective,</p> <p>4 get the participation of Ann Raider and Bob</p> <p>5 Fireman in developing sales calls?</p> <p>6 A. At some point, yes.</p> <p>7 Q. I show you a document that was marked</p> <p>8 in Mr. Lellouche's deposition as Exhibit 1.</p> <p>9 (Handing document to witness.)</p> <p>10 A. Okay.</p> <p>11 Q. I ask you if you have a memory of</p> <p>12 seeing any version of that document.</p> <p>13 (A pause in the proceedings.)</p> <p>14 A. I can tell you I haven't seen this.</p> <p>15 Q. You recognize the names on the first</p> <p>16 page, though, I take it?</p> <p>17 A. Yes.</p> <p>18 Q. These are all people within News</p> <p>19 America or News America Marketing?</p> <p>20 A. News Corporation.</p> <p>21 Q. News Corp. I'm just going to ask you</p> <p>22 one question. You might want to look at this to</p>
<p style="text-align: right;">Page 159</p> <p>1 Q. Okay. So you believe you did see</p> <p>2 those at some point?</p> <p>3 A. Yes.</p> <p>4 Q. Did you help generate them?</p> <p>5 A. Again, not that I can recall.</p> <p>6 Q. Who in your experience would have</p> <p>7 been responsible for generating the sales targets</p> <p>8 for CCMI or SmartSource Direct?</p> <p>9 A. Chris, Henry, myself, finance,</p> <p>10 Heather Harde. I think that would be it.</p> <p>11 Q. Do you remember involving Ann Raider</p> <p>12 and Bob Fireman in the process of generating</p> <p>13 sales targets?</p> <p>14 A. I don't have any specific</p> <p>15 recollection of that.</p> <p>16 Q. Is that something you would have</p> <p>17 expected to happen?</p> <p>18 A. I would have, yes.</p> <p>19 Q. Why?</p> <p>20 A. As we bought these companies, we were</p> <p>21 taking a look at what we could do and I'm sure we</p> <p>22 looked at the background information. But I</p>	<p style="text-align: right;">Page 161</p> <p>1 reference --</p> <p>2 A. Okay.</p> <p>3 Q. -- take a look at the third page.</p> <p>4 A. Page 3.</p> <p>5 Q. Yes, sir. Take a look under, "Model</p> <p>6 Assumptions."</p> <p>7 A. Yes.</p> <p>8 Q. See, one, two, three, four, five</p> <p>9 bullet points down? Begins, "News America's</p> <p>10 model assumes"?</p> <p>11 A. Yes.</p> <p>12 Q. My basic question is this:</p> <p>13 Do you remember anyone discussing</p> <p>14 with you News America's valuation of CCMI?</p> <p>15 A. Never. No.</p> <p>16 Q. Okay.</p> <p>17 MR. KATZ: Can we take a break?</p> <p>18 MR. PETERS: Sure.</p> <p>19 (Recess taken.)</p> <p>20 EXAMINATION (Cont'd.)</p> <p>21 BY MR. PETERS:</p> <p>22 Q. Let me show you an exhibit that was</p>

41 (Pages 158 to 161)

Garofalo, Martin

July 17, 2007

New York, NY

<p style="text-align: right;">Page 162</p> <p>1 marked as Exhibit 34 in a prior deposition. It 2 is titled, "SmartSource Direct Strategies, March 3 14, 2002, Management Overview," Bates-stamped 4 FR3740. 5 First question is this: Where were 6 you as of March 14, '02? Were you still with the 7 IGroup? 8 A. I'm not certain. But according to 9 this, I was not. 10 Q. Bill Christie was then the president 11 of the SmartSource IGroup, you see that listed in 12 this chart, right? 13 A. Yes, I do. 14 Q. So you can place it in time that by 15 then you'd gone back to the core business? 16 A. Yes, that's my understanding. 17 Q. I take it you haven't seen this 18 organization chart? 19 A. I hadn't, no. 20 Q. Okay. 21 MR. KATZ: Can we mark this? 22 MR. PETERS: It was Exhibit 34 in a</p>	<p style="text-align: right;">Page 164</p> <p>1 MR. KATZ: Objection. 2 A. I do not. I do not. 3 MR. PETERS: Why don't you just give 4 me five minutes. I may be done. 5 THE WITNESS: Okay. 6 (Recess taken.) 7 MR. PETERS: Just a couple more. 8 (Plaintiff Exhibit (Garofalo) 43, 9 organization chart Bates numbered FR3740, 10 previously marked as Exhibit 34, marked 11 for identification, as of this date.) 12 EXAMINATION (Cont'd.) 13 BY MR. PETERS: 14 Q. Just a few more questions, 15 Mr. Garofalo. 16 MR. PETERS: But I will note for the 17 record that we have marked Exhibit 43 this 18 org chart with Bates label FR3740. The 19 reason I marked it separately as 20 Exhibit 43 is, somehow we just skipped 21 one. So in order just to keep a place, I 22 stuck it in.</p>
<p style="text-align: right;">Page 163</p> <p>1 previous dep. 2 MR. KATZ: Oh. 3 Q. Under the FY 2002 year in review, you 4 see the bullet points, and the first one says, 5 "Supervisory reorganization relieves Fireman of 6 operations and Raider of retail sales 7 responsibility." 8 Is that something that you knew about 9 in or about the March '02 time frame? 10 A. Not that I recall. 11 Q. Do you recall at any time up to the 12 time that Bob Fireman was removed from News 13 America's offices, that he was relieved of 14 operational responsibilities? 15 A. I don't remember -- I presently have 16 no recall of that, no. 17 Q. Next bullet point says, 18 "Reorganization of the operations team and 19 knowledge transfer of CCMI operational expertise 20 is complete." 21 Do you remember that effort underway 22 when you were the EVP of sales?</p>	<p style="text-align: right;">Page 165</p> <p>1 MR. KATZ: And the others begin with 2 44, 45 and 46? 3 MR. PETERS: No -- yes, that's 4 correct. 42, 43, 44, 45 -- 5 THE WITNESS: 42 to 44. 6 MR. PETERS: Right. So now we have 7 the complete sequence of exhibits. 8 MR. KATZ: Okay. 9 Q. Did you ever have any conversations 10 with Mr. Carlucci about how he saw the future of 11 targeted direct mail? 12 A. Not that I can recall. 13 Q. Was there ever a philosophical shift 14 that you can point to, or a business shift that 15 you can point to, where the products that CCMI 16 had to offer in loyalty marketing products and 17 services were no longer of interest to or of 18 lesser interest to News America Marketing? 19 A. No. Not to my knowledge. 20 Q. How long after the acquisition of 21 CCMI did you join the IGroup? 22 A. Again, not certain what time we</p>

42 (Pages 162 to 165)

Garofalo, Martin

July 17, 2007

New York, NY

<p style="text-align: right;">Page 166</p> <p>1 acquired the CCMI as an entity. 2 Q. Summer of '99. 3 A. Summer of '99. And I think the group 4 was formed, the IGroup was formed and I was there 5 when it was put in place, which was April of 6 2000. 7 Q. Okay. So there were operations in 8 place and the company was running CCMI before you 9 got involved with CCMI. 10 A. Yes. 11 Q. Who was running CCMI? 12 A. I don't know for sure. 13 Q. Was there an information exchange so 14 that you could learn what had gone on to date at 15 CCMI? 16 A. Again, I don't recall such a meeting. 17 Q. Were you effectively starting from 18 scratch when you joined the IGroup? 19 MR. KATZ: Objection. 20 A. Um -- 21 MR. KATZ: If you need an 22 explanation, you can ask --</p>	<p style="text-align: right;">Page 168</p> <p>1 for me, it was a whole new role for me. 2 Q. Okay. 3 A. Yeah. 4 Q. And you didn't have anyone, for 5 example, to take the baton from because you were 6 starting from scratch. 7 MR. KATZ: Objection. 8 A. There was no dedicated sales 9 management prior to that, to my knowledge. 10 Q. Ann Raider, for example, wasn't 11 running sales? 12 A. Not for the breadth of the 13 organization, no. 14 MR. KATZ: Objection to the form. 15 MR. PETERS: I have nothing further. 16 (Time noted: 2:38 p.m.) 17 18 19 20 21 22</p>
<p style="text-align: right;">Page 167</p> <p>1 A. -- no, I don't remember them other 2 there being an overall meeting saying, "This is 3 what's transpired over this course of time." I 4 remember the initial meeting that we had that I 5 spoke to you about earlier. 6 Q. That's really what I'm getting at. 7 You didn't get the sense that you were coming 8 into an ongoing operation. 9 MR. KATZ: Objection. 10 A. Well, obviously, there were 11 activities going on but the sense was, this was a 12 whole new start, as I saw it, anyway. 13 Q. So you didn't spend time with the 14 people that had been running the businesses 15 beforehand to figure out what they had been able 16 to accomplish because you were effectively 17 starting over. 18 MR. KATZ: Objection. 19 A. Actually, the more we talk about it, 20 I think that Henry was involved, so to that 21 degree I believe he was involved. So to that 22 degree, we were getting insights from him. But</p>	<p style="text-align: right;">Page 169</p> <p>1 STATE OF NEW YORK) 2 ss: 3 COUNTY OF NEW YORK) 4 5 I, MARTIN GAROFALO, the witness 6 herein, having read the foregoing testimony of 7 the pages of this deposition, do hereby certify 8 it to be a true and correct transcript, subject 9 to the corrections, if any, shown on the attached 10 page. 11 oOo 12 13 14 <u>MARTIN GAROFALO</u> 15 16 17 18 19 20 21 22</p>

43 (Pages 166 to 169)

Garofalo, Martin

July 17, 2007

New York, NY

Page 170

1 CERTIFICATE
2 STATE OF NEW YORK)
3 : ss.
4 COUNTY OF NEW YORK)
5 I, DAVID LEVY, CSR, a Shorthand
6 Reporter and Notary Public within and
7 for the State of New York, do hereby
8 certify:
9 That MARTIN GAROFALO, the
10 witness whose deposition is hereinbefore
11 set forth, was duly sworn by me and that
12 such deposition is a true record of the
13 testimony given by the witness.
14 I further certify that I am not
15 related to any of the parties to this
16 action by blood or marriage, and that I
17 am in no way interested in the outcome
18 of this matter.
19 IN WITNESS WHEREOF, I have
20 hereunto set my hand this 29th day of
21 July, 2007.
22 DAVID LEVY, CSR

44 (Page 170)

Henderson Legal Services
202-220-4158